

आयकर अपीलीय अधिकरण “एक सदस्य मामला” न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, PUNE

श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1766/PUN/2019
निर्धारण वर्ष / Assessment Year : 2009-10

Sikandar And Company,
Guruwar Peth, Battis Shirala,
Dist.-Sangli – 415408

PAN : AAFFS0433C

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward – 2(1), Sangli

.....प्रत्यर्थी / Respondent

Assessee by : Shri Kishor B. Phadke

Revenue by : Shri M.G. Jasnani

सुनवाई की तारीख / Date of Hearing : 19-09-2022

घोषणा की तारीख / Date of Pronouncement : 27-09-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 04-07-2019 passed by the Commissioner of Income Tax (Appeals)-1, Kolhapur [‘CIT(A)’] for assessment year 2009-10.

2. I find that this appeal was filed with a delay of 02 days. The assessee filed notarized affidavit dated 21-01-2020 explaining the said delay. On perusal of notarized affidavit and hearing both the parties, I find that the reasons stated by the assessee are bonafide which really prevented

the assessee to file the present appeal in time. Therefore, the delay of 02 days is condoned.

3. The ld. AR drew my attention to additional ground raised and prayed to take up the same as legal issue as it goes to the root of case. He also submits that no set of facts are required to be examined and prayed to take up the same as a preliminary issue. The ld. DR reported no objection in taking additional ground of appeal for adjudication at first.

4. The assessee raised additional ground as ground No. 4 challenging the validity of reopening of assessment u/s. 147 of the Act is bad under law.

5. I note that the assessee is a firm derives income from trading on wholesale and semi-wholesale basis in Kirana, Bhusar and Cattle feed items. The assessee filed return of income declaring a total income of Rs.21,540/-. The AO determined the total income of the assessee at Rs.8,07,300/- u/s. 143(3) of the Act vide its order dated 28-12-2011. Thereafter, the assessment was reopened u/s. 148 of the Act by recording reasons. The ld. AR placed on record a copy of order sheet where the AO recorded reasons for initiating proceedings u/s. 147 of the Act. I note that the AO was of the opinion that the assessee made payments in cash excess of Rs.20,000/- to a person in a day. The AO did not mention any tangible material came to its knowledge for initiation of reassessment proceedings u/s. 147 of the Act except stating in para 4 of the reasons recorded that on verification of account extracts of purchasers. It is seen that the assessee firm had made payment in cash towards the purchasers of Rs.9,94,684/- on verification of accounts of purchasers. The contention of ld. AR is that

all the information was available before the AO in the original proceedings itself and it is not the fresh information requiring the AO to initiate reassessment proceedings u/s. 147 of the Act. The ld. DR vehemently rebutted the arguments of ld. AR and drew our attention to audit objection in the case of assessee placed at pages 1 and 2 of the Revenue's paper book. However, this information found no place in the reasons recorded but however the AO proceeded to reopen the assessment. According to ld. AR that the assessee disclosed all the material in the original assessment proceedings itself and reopening is only the change of opinion. The ld. AR drew our attention to the decision of Hon'ble Supreme Court in the case of CIT Vs. Kelvinator of India Ltd. reported in 320 ITR 561 (SC). We note that the audit objection at page 1 and 2 of the Revenue's paper book was issued on 03-09-2015 whereas notice u/s. 148 of the Act was issued on 27-03-2015 which is clear from the para 2 of the assessment order. Therefore, it is clear that the AO reopened assessment without there being any basis but however stated on an examination of ledger of purchasers, in my opinion, is no tangible material came to the knowledge of AO. Admittedly, there is no date reflected on the order sheet on which day the AO has recorded the reasons for initiating proceedings u/s. 147 of the Act. The ld. AR placed on record order of this Tribunal in the case of M/s. Allabaksha Mehboob Mulla Vs. ITO in ITA No. 1765/PUN/2019 for A.Y. 2009-10 vide order dated 25-08-2022 concerning the same issue. The ld. AR argued that the Tribunal held the reassessment framed u/s. 147 of the Act is invalid for the reason there was no indication on the failure of assessee disclosing all the relevant particulars fully and truly. In the present case also the AO did not mention any tangible material came to its knowledge for reopening and also the failure of the assessee in disclosing fully and truly all the relevant particulars. In similar circumstances the Hon'ble

Supreme Court in the case of Kelvinator of India Ltd. (supra) that reopening could be done on fulfillment of two conditions. The Hon'ble Supreme Court held that after 01-04-1989 the AO has to power to reopen, provided there is tangible material to come to the conclusion that there is escapement of income from other assessment. Further, there must be reasons recorded showing live link with the formation of the belief that there is escapement of income from assessment. In the present case, I find no such tangible material came to the knowledge of AO which resulted in a conclusion that there is a escapement of income from original assessment. Further, I find no live link with the formation of such belief that there is a escapement of income from assessment except stating that an examination of ledgers of purchasers. Therefore, the AO has no jurisdiction to reopen the assessment in the absence of any tangible material showing the escapement of income. Thus, the reassessment framed by the AO fails and as confirmed by the CIT(A) is not justified. Thus, additional ground as ground No. 4 raised by the assessee is allowed.

6. In view of my decision in additional ground No. 4, the main ground Nos. 1 to 3 raised by the assessee becomes infructuous requiring no adjudication.

7. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 27th September, 2022.

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 27th September, 2022.
रवि

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Kolhapur
4. The Pr. CIT-1, Kolhapur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य मामला" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune