

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'A' NEW DELHI]**

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 1204/DEL/2020 (A.Y. 2012-13)

Arun Kumar Aggarwal D-14/192, IInd Floor, Sescdtor-8, Rohini Delhi-110085 PAN: AAJPA6407G (APPELLANT)	Vs.	Income Tax Officer Ward-35(8) New Delhi (RESPONDENT)
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Assessee by :	Shri K. Sampath, Adv & Sh. V. Rajkuamr, Adv
Department by:	Shri Kanv Bali, Sr. D. R.;

Date of Hearing	03.05.2023
Date of Pronouncement	18.05.2023

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the Assessee against the order dated 19/03/2020 of the Id. Commissioner of Income Tax (Appeals) (hereinafter referred to CIT (Appeals) Delhi-13, for assessment year 2012-13.

2. The Assessee has raised the following substantive ground of appeal:-

“That on the facts and in the circumstances of the case and in law the Ld.CIT(A) erred in:

1. *Confirming following actions of the Assessing Officer _*
 - a. *issuing notice u/s 148 of the Income Tax Act, 1961 which is without jurisdiction and barred by limitation;*
 - b. *initiating proceedings u/s 147/148 without there being any satisfaction and material on record;*
 - c. *passing order u/s 143(3)/ 147 of the Act determining taxable income at Rs. 61,65,020/- against returned income in a sum of Rs.13,15,520/-*

2. *Sustaining the addition made by the Assessing Officer to the extent of Rs. 34,02,000/- on account of alleged bogus purchases.*

All the actions being erroneous, unlawful and untenable it is prayed that the same may be quashed with directions for appropriate relief.”

3. Brief facts of the case as mentioned in the order of the CIT(A) are that, the assessee is stated to be engaged in the business of trading and chemicals in the name of M/s Arco Chem. The return of income filed by the assessee declaring income of Rs. 6,71,790/-, the case of the assessee was selected for scrutiny and was assessed at total income of Rs.7,07,886/-. Subsequently, the case was reopened by issuing notice u/s 148 of the Act on the basis of information received from DDIT, Investigation, New Delhi regarding frequent

high- value cash deposits, transfer and RTGS credit followed by immediate transfer and RTGS debits leaving minimum balance in the account number 911020010105859 held in the name of M/s Astro Informatics. The total turnover of the entity in a span of 10 months was over Rs.26.26 crores but no ITR was filed. During the year under consideration, the assessee had received accommodation entries of Rs.48,49,500/- from M/s Astro Informatics by way of bogus purchases. In response to the notice under section 148 of the Act issued on 31.03.2019, the assessee filed his return on 22.04.2019. The assessee also filed his objections on the reasons recorded for issuing of notice under section 148 of the Act on 20.08.2019 which was duly disposed off by passing a speaking order dated 22.10.2019 by the Assessing Officer. As regards transactions with M/s Astro Informatics, the assessee submitted purchases of Rs.32,40,000/- made and submitted the ledger account of purchase and certain invoices. The AO observed that the transactions in the account were mostly in round figures and the bank account brought out that there was trail of transfer of money from one account to another account. The assessee was one of the beneficiaries as also mentioned in the report of the Investigation Wing. To verify the genuineness of transactions made with M/s Astro Informatics, notices under section 133(6) of the Act was issued on 02.12.2019 and 10.12.2019, however no reply was received. Further the Inspector of the ward was also deputed to make local inquiries at F - 52, Ground Floor, Kamla Nagar -110007, who reported that the said firm did not exist at the given address, specially

keeping in mind that the said entity had not filed its Income Tax Return as per the Investigation Wing's Report. The AO issued the final show cause notice on 12.12.2019, in response to which the assessee once again objected to the proceedings, which as per AO had already been disposed by passing a speaking order. Accordingly the assessing officer held the said purchase of Rs.48,49,500/- to be accommodation entry by a dummy shell company. Accordingly, passed the assessment order by making addition of Rs.48,49,500/-by treating the same as accommodation entry.

4. As against the assessment order dated 19/12/2019 passed u/s 147/143(3) of the Act, the assessee preferred an appeal before the CIT(A), the CIT(A) vide order dated 19/03/2020 restricted the addition of bogus purchase to Rs.34,02,000/- by partly allowing the Appeal filed by the assessee.

5. Aggrieved by the order of the CIT(A) in sustaining the said addition of Rs. 34,02,000/- the assessee preferred the present appeal on the grounds mentioned above.

6. The Ld. Counsel for the assessee addressing argument on Ground No. 1 and its sub grounds, submitted that the issuing notice u/s 148 of the Income Tax Act is without jurisdiction and the same is barred by limitation. Initiation of the proceedings u/s 147/148 of the Act without their being any satisfaction and material on record, therefore, the authorities have committed error in passing the impugned order. The Ld. Counsel for the assessee had taken us

through the various judicial pronouncements and also filed written submission in support of the oral submissions.

7. On the other hand, the Ld. DR submitted that the notice u/s 148 of the Act has been issued in conformity with the provisions of Income Tax Act and to achieve the true object of the provisions of the Act and re-assessment proceedings has been initiated based on the information received from DDIT (Investigation), New Delhi, wherein it was noticed that frequent high value cash deposits have been done in the account of M/s Astro Informatics, the assessee being one of the beneficiaries of the said dummy/Shell company, which has provided accommodation entries to the assessee, which has been conclusively proved by the Department, therefore, submitted that the order of the CIT(A) in restricting the addition of Rs. 34,02,000/- requires no interference at the hands of the Tribunal.

8. We have heard the parties and perused the materials available on record. In the present case, the assessment of the assessee for A.Y 2012-13 was originally completed on 14/11/2014 u/s 143(3) of the Act wherein the Assessing Officer has perused the material on record and ultimately completed the assessment on the return income of the assessee. Further, it is also found that the notice u/s 147/148 of the Act has been issued on 31/03/2019 which is after the expiry of four years from the end of relevant assessment year. We have gone through the reasons recorded for initiation of proceedings u/s

147/148 of the Act. The relevant portion of the reason recorded for reopening the assessment for the year under consideration reads as follows:-

“Reasons for the belief that income has escaped assessment.

Information has been received from DDIT(Inv.). Unit-1(3), New Delhi vide letter F.No. DDIT(Inv.)/Unit-1(3)/147/154/2018-19/2034 dated 28.03.2019. As per information it is noticed that frequent high value cash deposits, transfers and RTGS credit followed by immediate transfers and RTGS debits leaving the minimum balance in the account no. 911020010105859 in the name of M/s. Astro Informatics. The total turnover of the company in span of 10 months is over Rs. 26.26 Crores.

During the course of investigation proceedings it is seen that transaction in the account is mostly in round/whole amount indicating that it might not be in regular business transaction. Therefore, it appears that M/s. Astro Informatics is a dummy/shell company/Fly by night concern. After sifting through the Bank account statement and analyzing the trail of money movement from one account to another account several dummy companies. As per list of beneficiaries and the details of accommodation entry received for A.Y. 2012-13, one of the beneficiary is M/s. Arco oprietor Sh. Arun Kumar Aggarwal.

As per record, ITR for F.Y. 2011-12 relevant to A.Y. 2012-13 has been filed by the assessee on 27.09.2012.

Further as per ITS (Individual Transaction Statement) it is perused that assessee has deposited cash of Rs. 13,50,000/- in HDFC Bank and earned interest income of Rs. 1,99,122/- as well. This is in addition to the income received through accommodation entry of Rs. 48,49,500/-.

As per the material available as well as the information provided, it is clear that the assessee has tried to account for his unaccounted money which is nothing but an accommodation

Therefore the same is treated as undisclosed income of the assessee and is liable to taxed in the hands of the assessee.

In view of the above, the provision of clause (a) of Explanation 2 to section 147 are applicable to facts of the case and it is a fit case where income chargeable to tax has escaped assessment.

In this case the four years but not more than six years have elapsed from the end of the assessment year under consideration and income chargeable to tax which has escaped assessment is more than Rs. 1 lacs necessary sanction to issue notice u/s 148 of the Act is being obtained separately from the Pr. Commissioner of Income Tax-13, Delhi under amended provisions of section 151 of the Act w.e.f. 01-06-2015.

Therefore, as per above findings the undersigned has reason to believe that income of Rs. 63,98,622/- has escaped assessment and is chargeable to tax for the year under consideration.”

9. The above reasons recorded for reopening does not depicts anything regarding failure of the assessee to disclose fully and truly all material facts necessary for the assessment at the time of original assessment.

10. We have also gone through the order passed u/s 147/143(3) of the Act wherein at no point of time, the A.O. found that there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for his

assessment at the time of original assessment. The relevant portion of the assessment order is reproduced as under:-

“ 4. During the course of investigation proceedings it as sent that transaction in the account if mostly in round/whole amount indicating that it might not in regular business and M/s Astron Informatics is a dummy/shell company. On going through his bank account it was observed that the trailing of money from one account to another account. The assessee was one of the beneficiaries. To verify the genuineness of the transactions made with M/s Astro Informatics, notices u/s 133(6) of the Act was issued to him on 02/12/2019 and 10/12/2019 but no reply was received form M/s Astro Informatics. Further, the Inspector of this ward was deputed to enquire about M/s Astro Informatics, F-52, Ground floor, Kamla Nagar, Delhi, 110007. The Inspector in his report has submitted that the said firm does not exist at the given address as on date. The Inspector report dated 10/12/2019 is placed on record.

5. On the basis of information/tangible material received from investigation, perusal of bank statement, non-compliance of the notice u/s 133(6) of the Act and Inspector's report, it was cleared that the said firm i.e. M/s Astro Informatics is a dummy shell company which has provided accommodation entries to the assessee amounting to Rs. 48,49,500/- during the year under consideration and final show cause notice was issued on 12/12/2019. The Assessee has once again objected vide his letter dated 16/12/2019 however the same has already been disposed off by passing speaking order. Therefore, transaction with M/s Astro Informatics was found to be accommodation entries, and accordingly added to his income. Penalty proceedings u/s 271(1)(c)

of the I.T. Act, 1961 is being initiated separately for furnishing inaccurate particulars of income.”

11. It is not in dispute that the original assessment order was completed u/s 143(3) of the Act on 14/11/2014. Further the proceedings initiated u/s 147/148 by issuing notice on 31/03/2014 which is after expiry of four years from the end of relevant assessment year. Bare reading of reasons recorded for reopening for the Assessment Year 2012-13 and also the reassessment order at no point of time the A.O alleged that there was a failure on the part of the assessee to disclose fully and truly material facts necessary for his assessment at the time of original assessment. Thus, in our opinion, the proceedings initiated u/s 147/148 amounts to making of roving enquiries of the settled matter which has already become final in the original assessment after due verification and examination. The various Courts and the Tribunal have held that the reassessment proceedings initiated beyond four years from the end of the relevant assessment year to be invalid in terms of proviso to Section 147 of the Act where there was no failure on the part of the Assessee to disclose fully and truly all the material facts necessary for the assessment.

12. The assessee has also relied on various judicial pronouncements in support of his contention. The Hon'ble Apex Court, in the decision in Commissioner of Income Tax and Another v. Foramer France [2003 Vol.264 ITR 566], while dismissing the appeal filed by the Revenue and thereby confirming the judgment of the Allahabad High Court, recorded reasons as to the non-

failure on the part of the assessee to disclose fully and truly all material facts for assessment and further found that notices were bad as they were only the basis of a change of opinion and the law that an assessment could not be reopened on a change of opinion was the same before and after amendment by the Direct Tax Laws (Amendment) Act, 1986 of Section 147.

13. In the decision in Commissioner of Income Tax v.A.V.Thomas Exports Ltd. [(2008) 296 ITR 603 (Mad)], which pertains to Assessment Year 1990-1991, the Division Bench of this Court, while dealing with the appeal filed by the Revenue, had observed that the initiation of proceedings was after a period of four years by reason of failure on the part of the assessee and as such, there was no jurisdiction to reopen the assessment under the provision of Section 147 of IT Act.

14. The Hon'ble High Court of Delhi at New Delhi in the case of D.T & T.D. C. Ltd. Vs. ACIT 232 CTR 260 (Del) held as under:-

9. We may also point out that insofar as the assessment year 1997-98 and 1998-99 are concerned, the same would require application of the proviso to Section 147 of the said Act, inasmuch as the notices under Section 148 of the said Act in respect of these two years have been issued beyond the period of four years prescribed in the said provision. That being the case, before the Assessing Officer could acquire jurisdiction for reopening the assessments in respect of these two years, it would have to be shown that the assessee did not file a return or that he did not make a full and true disclosure. It is an admitted position that the assessee had filed a return, therefore, the only question which remains to be open is whether the assessee made a full and true disclosure or not. In the present case

there is no allegation in the reasons recorded by the Assessing Officer that the assessee had failed to make a full and true disclosure of the relevant facts. In fact, there could be no such allegation because the assessee had clearly indicated the nature and contents of the TIUF and the treatment given by the assessee in its books of accounts. The same had also been examined by the Assessing Officer as aforesaid. Thus, in respect of the assessment years 1997-98 and 1998-99 this additional ground is also available in favour of the assessee/petitioner.

10. The position that a mere change of opinion would not entitle an Assessing Officer to reopen a completed assessment is well settled. The latest decision being of the Supreme Court in Civil Appeal No.2009-2011 of 2003 and Civil Appeal No. 2520 of 2008 decided on 18th January, 2010 which approves this Court's Full Bench decision in the case of Commissioner of Income Tax vs. Kelvinator of India Limited:256 ITR 1 (Del.) (HC). The power of re-assessment is different from the power of review. The Assessing Officer has been given the power to re-asses under Section 147 upon certain conditions being satisfied. The Assessing Officer does not have the power of review. If a change of opinion were to be permitted as a ground for re-assessment then it would amount to granting a licence to the Assessing Officer to „review“ his decisions, which power he does not have.

11. Consequently, holding that initiation of the proceedings in question was based entirely on change of opinion, we find that the re-assessment proceedings are without jurisdiction. The notices under Section 147/148 of the said Act and the proceedings pursuant thereto stand quashed. We make it clear that in this writ petition we have considered the case only from the stand point of jurisdiction and not on the merits of the issues with regard to taxability of the amount transferred to TIUF.

15. In so far as the judgments relied by the Ld. DR are concerned, considering the facts of the present case that there was no allegation either in the reasons recorded or in the order passed u/s 147/148 of the Act that there was a

failure on the part of the assessee to disclose fully and truly all material facts for assessment. Thus the citations relied by the Ld. DR are not applicable and the same are differentiable considering the facts of the present case.

16. By considering the above facts and circumstances and by following the above judicial pronouncements (supra) on the issue in hand, we find merit in the Ground No. 1(a) of the Appeal on the limitation and in our considered opinion the order of the A.O. dated 19/02/2019 and the order of the CIT(A) dated 19/03/2020 are unsustainable on facts as well as law. Accordingly, we allow the Ground No. 1(a) of the Assessee.

17. Since, we have allowed the ground No. 1(a) of the Assessee on the point of limitation for invoking Section 148 of the Act, we refrain to adjudicate on merits being academic in nature. The other Grounds of the Assessee require no adjudication.

18. In the result the Appeal of the assessee is partly allowed.

Order pronounced in the open court on : **18/05/2023**.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

Dated : 18/05/2023

R.N, Sr. PS

Copy forwarded to :-

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI