

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No. 273/Ahd/2013
(Assessment Year: 2005-06)

Income Tax Officer, Ward-2, Anand	vs.	M/s. Indian Packaging Products, At Jitodia, Dist. Anand
[PAN No. AAIFI7051H]		
(Appellant)	..	(Respondent)

Appellant by :	Ms. Saumya Pandey Jain, Sr. DR
Respondent by:	None

Date of Hearing	09.11.2023
Date of Pronouncement	13.12.2023

ORDER

PER SIDDHARTHA NAUTIYAL, JM:

This appeal has been filed by the Revenue against the order passed by the Ld. Commissioner of Income Tax (Appeals)-IV, (in short “Ld. CIT(A)”), Baroda vide order dated 29.11.2012 passed for the Assessment Year 2005-06.

2. The Revenue has raised the following grounds of appeal:-

“1. On the facts and in the circumstances of the case, the learned CIT(A) erred in quashing the re-assessment proceedings initiated in pursuance of notice u/s 148 of the Act without appreciating the fact that as per provisions of section 292BB, the assessee shall be precluded from taking any objection in any proceedings or inquiry under this Act if the notice has been served upon him in time and in accordance with the provisions of the Income-tax Act, whereas, in the instant case, the assessee has not raised any such objection before the completion of the re-assessment proceedings.

2. On the facts and in the circumstances of the case, the learned CIT(A) erred in not appreciating the fact that it is not a case where the AO has completed the re-assessment after obtaining sanction u/s 151(1) from a lower authority than

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prescribed by the Act but sanction has been obtained by the AO from a higher authority then prescribed by the Act.

3. *On the facts and in the circumstances of the case, the learned CIT(A) ought to have upheld the order of the Assessing Officer.*

4. *The appellant craves leave to add to, amend or alter the above grounds as may be deemed necessary.”*

3. The brief facts of the case are that the original assessment order was passed under Section 144 of the Act on 24.12.2008 in which certain additions amounting to Rs. 8,81,120/- were made by the Assessing Officer.

4. In appeal, Ld. CIT(A) allowed relief to the assessee to the extent of Rs. 8,26,820/-. Thereafter, the Assessing Officer re-opened the case of the assessee under Section 147 of the Act after recording the following reasons:-

“In the instant case, order u/s.144 of the IT Act, 1961 was passed on 24/12/2007. While passing this order, remuneration and interest amounting to Rs.1,83,200 and Rs.1,87,537/- respectively claimed by the assessee has been allowed which was otherwise not allowable to the assessee in view of the provisions of section 184(5) of the IT Act.

Therefore, the undersigned has reason to believe that the income chargeable to tax to has escaped assessment within the meaning of Section 147 of the IT Act, 1961.”

5. In the 147 proceedings, the Assessing Officer was of the view that as per the provisions of Section 184(5) of the Act, no remuneration and interest paid by the assessee to its partners was allowable while computing the income chargeable under the head of income from business. The Assessing Officer observed that on verification, it has been noticed that while making assessment under Section 144 of the Act, the Assessing Officer allowed deduction of Rs. 1,87,537/- and Rs. 1,83,200/- on account of interest and remuneration, which was incorrectly allowed keeping in view the provisions

of Section 184(5) of the Act. Accordingly, the Assessing Officer added the aforesaid amount of Rs. 4,29,737/- under Section 184(5) of the Act on account of disallowance of remuneration and interest paid by the assessee to its partners.

6. In appeal, Ld. CIT(A) allowed the appeal of the assessee on technical grounds and Department is in appeal before us against the aforesaid order passed by Ld. CIT(A).

7. The Department is in appeal before us against the aforesaid order passed by Ld. CIT(A) allowing the appeal of the assessee.

8. Before us, the Counsel for the assessee submitted that this is the case of mere change of opinion since the original assessment was finalized on 24.12.2007 in which all the facts were on record before the Assessing Officer and the Assessing Officer had assessed the assessee as a registered firm and not as an AOP and had specifically allowed remuneration and interest to partners. It was submitted that the case of the assessee was reopened beyond the period of four years from the end of the relevant assessment year and there was no new material on record to initiate such re-assessment proceedings. It was submitted before us that it is a settled legal position that no re-assessment is possible on account of a mere change in opinion. It was submitted that in the original assessment proceedings all the facts were on record and the Assessing Officer had assessed the assessee as a registered firm and not as an AOP and has specifically allowed remuneration and interest to partners. Further, it was submitted that to initiate re-assessment proceedings beyond a period of four years from the

end of the relevant assessment year, it is an essential requirement that the income must have escaped assessment on account of default on part of the assessee to disclose true and correct facts during the course of original assessment proceedings. However, in the instant case, it is an admitted position that there was no new material on the basis of which re-assessment proceedings were initiated. Further, it was submitted that the Department has not been able to demonstrate that there was any failure on the part of the assessee in disclosing fully and truly all material facts. It was further submitted that from perusal of the reasons supplied to the assessee, there is no allegation that income had escaped assessment on account of assessee's failure to make a full and true disclosure of all material facts necessary for completing assessment.

9. In response, Ld. D.R. relied on the observations made by the Assessing Officer in the order passed under Section 144 of the Act.

10. We have heard the rival contentions and perused the material on record. In our considered view, it is a well settled law that re-assessment proceedings cannot be initiated after beyond a period of four years unless the Department is able to demonstrate that such proceedings have been initiated on account of any failure on part of the assessee to truly and fully disclose all the material facts at the time of framing the assessment. In the instant case on perusal of reasons recorded while initiating 147 proceedings, it is observed that re-assessment proceedings were initiated on the ground that remuneration and interest amounting to Rs. 1,83,200/- and Rs.1,87,537/- are not allowable to the assessee in view of the provisions of Section 184(5) of the Act. In the case of **CIT vs. Bhanji Lavji 79 ITR 582**

(SC), the Hon'ble Supreme Court held that when primary facts necessary for assessment are fully and truly disclosed, the Assessing Officer is not entitled on change of opinion to commence proceedings for reassessment. In the case of **CIT vs. Kelvinator of India Ltd. 320 ITR 561 (SC)**, the Hon'ble Supreme Court held that the concept of 'change of opinion' must be treated as an in-built test to check abuse of power by Assessing Officer. The Hon'ble Supreme Court held that Assessing Officer has no power to review. In this case it was held that the Assessing Officer can re-open the case only when there is "tangible material" would come to the conclusion that there is escapement of income from assessment. In the case of **Jindal Photo Films Ltd. vs. DCIT 234 ITR 170 (Del)**, the Delhi High Court held that when between the date of orders of assessment sought to be reopened and the date of forming of opinion by the Assessing Officer, nothing new had happened, there was no new material which had come on record or no new information had been received by the Assessing Officer, it was held that this was a case of mere change of opinion which did not provide jurisdiction to the Assessing Officer to initiate proceedings under Section 147 of the Act. In the case of **CIT vs. Soh Kisan Cold Storage 209 ITR 700 (Patna H.C.)**, the High Court held that since the Assessing Officer had initiated re-assessment proceedings on the same set of facts which were present before him while making the original assessment and therefore, it was not permissible for him to initiate re-assessment proceedings under Section 147 of the Act. In the instant facts we observe that re-assessment proceedings have been initiated beyond the period of four years from the end of the relevant assessment year. Further, it has also not the case of the Department that any fresh or new material had been unearthed which would

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lead to the conclusion that income had escaped assessment in the original assessment proceedings on account of failure on part of the assessee to fully and truly disclose all material facts during the course of original assessment proceedings. In this case, it is observed that the Assessing Officer is only seeking to make a disallowance on account of re-appreciation of law with respect to the same set of facts which were present before him during the course of original assessment proceedings. However, in our considered view, looking into the facts of the instant case and the judicial precedents on the subject referred to above, this is a case of mere change of opinion, which is not permissible in law. Accordingly, we are of the considered view that the 147 proceedings are liable to be set-aside, looking into the instant facts.

11. In the result, the appeal of the Department is dismissed.

This Order pronounced in Open Court on	13/12/2023
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Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 13/12/2023

TANMAY, Sr. PS

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1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad