

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.716/Ind/2014  
Assessment Year: 2006-07**

Smt. Vinita Devi Bagrodia Block No.1, Grasim Chemical Division Birlagram, Nagda (Appellant)	<b>बनाम/</b> Vs.	DCIT Circle-2(1) Ujjain (Revenue )
P.A. No.ACQPB5660H		

Appellant by	Shri Pavan Ved, A.R.
Respondent by	Shri K.G. Goyal, Sr.D.R.
<b>Date of Hearing:</b>	<b>17.01.2019</b>
<b>Date of Pronouncement:</b>	<b>07.03.2019</b>

**आदेश / O R D E R**

**PER KUL BHARAT, J.M:**

This appeal by the assessee is directed against order of the CIT(A)-2, Ujjain dated 20.8.2014 pertaining to the

assessment year 2006-07. The assessee has raised following grounds of appeal:

1. *That the Ld. CIT(A) erred in confirming the action of the A.O. in invoking the provisions of section 147 and 148 of the Act in reopening the already concluded assessment proceedings u/s 143(3) on 11.12.2008 without appreciating that all the relevant facts and material were already available with the A.O. who passed the original assessment order u/s 143(3) on 11.12.2008.*
2. *Whether on the facts and in the circumstances of the case the Ld. CIT(A) erred in confirming the addition of Rs.40,46,763/- (out of the total additions made by the A.O. at Rs.60,85,373/-) on account of disallowance u/s 14A of the Income Tax Act read with Rule 8D and he failed to consider and appreciate the detailed submissions made before him in a summary and mechanical manner.*
3. *In the alternative, whether on the facts and in the circumstances of the case the addition confirm by the Ld. CIT(A) at Rs.40,46,763/- on account of disallowance u/s 14A of the Income Tax Act read with rule 8D is highly excessive and the dividend income of Rs.78,39,813/- is only incidental/by product/unintentional receipt of the main trading activity.*
4. *The appellant craves leave to add, amend, alter or vary all or any of the grounds of appeal on or before the date of hearing.*

2. The assessee has also raised following additional grounds:-

5. *The reopening of assessment u/s 147 is null and void authorities below initio as in the reasons recorded for reopening, the Ld. A.O. has not given a finding that reopening was because of "omission or failure on the part of the assessee to make true and full disclosure".*
6. *The reopening of assessment is null and void authorities below initio also on the ground that the approval given by Ld. JCIT was without application of mind and was based on factual mistakes. There was no approval of Ld. CIT as mandated by section 151 of the Act and even if there was approval (though it was regarding remedial action of audit objection) the same was clearly without application of mind*

*and was under compulsion as is clear from the language of the letter of Ld. CIT.*

- 7. The reopening of assessment is null and void also because the reopening was done as a result of audit objection regarding allowability of interest and the allowance of interest was in accordance with High Court Decision; as interest on share trading is fully allowable u/s 36(1)(iii); even if there is incidental dividend income.*
- 8. The reopening of assessment is null and void authorities below initio also because the reopening was on the basis of audit objection and the Ld. CIT somehow wanted to take some remedial action to settle the audit objection.*

3. The facts giving rise to the present appeal are that return of income declaring total income at Rs.58,96,966/- was filed on 30.10.2006. The assessment was finalised u/s 143(3) of the Income Tax Act, 1961 (hereinafter called as 'the Act') on 11.12.2008 determining total income at Rs.59,34,440/-. Thereafter, the case of the assessee was reopened for assessment and the assessment u/s 147 of the Act was framed vide order dated 28.3.2013. While framing the assessment, the A.O. made disallowance u/s 14A of the Act of Rs.60,85,373/-. Against this, the assessee preferred an appeal before Ld. CIT(A), who after considering the submissions partly allowed the appeal. Ld.

CIT(A) confirmed the addition out of Rs.60,85,373/- to the extent of Rs.40,46,763/-, thereby he gave a relief of Rs.20,38,610/-. The Ld. CIT(A) also directed the A.O. to allow rebate u/s 88E of the Act after verification from the reports. The assessee has now filed the present appeal against reopening of the assessment and also sustaining the addition of Rs.40,46,763/-.

4. Ground Nos.1, 5 & 6 are against reopening of the assessment. Ld. Counsel for the assessee submitted that the assessing officer was not justified in reopening the assessment. He submitted that assessee is engaged in the business of share trading derived dividend of Rs.78,39,813/-, which is exempt u/s 10(34) of the Act. Scrutiny of the assessment u/s 143(3) of the Act was completed on 11.12.2008. During the assessment proceedings, all the relevant facts were disclosed fully and truly during the assessment proceedings. All the relevant

material brought before the A.O. relating to the share trading, etc. Specific queries were raised u/s 142(1) of the Act relating to interest expenditure and thereafter same was allowed after due application. He submitted that no failure on the part of the assessee to make true and full disclosure. He submitted that notice u/s 148 of the Act was issued after 4 years even though there was no failure on the part of the assessee to make true and full disclosure of income. He contended that notice u/s 148 of the Act was issued on 29.12.2011, after expiry of 4 years from the end of the relevant assessment year. The mandatory condition for issue of notice after 4 years is that the assessing officer must be satisfied that income has escaped assessment by reason of the failure on the part of the assessee to make true and full disclosure of all material facts necessary for the assessment. However, there is no such allegation in the satisfaction note recorded by the

A.O. that there was failure on the part of the assessee to make true and full disclosure of all the material facts. In the absence of such satisfaction, reopening is not valid. In support of this contention, reliance is placed on the judgement of the Hon'ble Bombay High Court rendered in the case of Sesa Goa Limited Vs. CIT 294 ITR 10 and the judgement of the Hon'ble Supreme Court in the case of Calcutta Discount Company Vs ITO 42 ITR 191 (SC). Further submission is made that assessing officer has not mentioned anywhere in the reasons recorded that there was failure on the part of the assessee, which is pre-requisite condition for reopening after 4 years. There are various case laws in favour of the assessee. The Ld. Counsel has placed reliance on the judgement of Bombay High Court in the case of Hindustan Lever Limited Vs. R.B. Wadekar 268 ITR 332, judgement of the Hon'ble Gujarat High Court in the case of General Motors Pvt. Ltd. Vs. DCIT

360 ITR 527. He further contended that the reopening is on the basis of change of opinion as the assessment was already framed u/s 143(3) of the Act. He submitted that the assessing officer reopened the assessment on the basis of information without his records that means all information was already available with him in his own records at the time of original assessment itself. There was no information from any outside source. Therefore, he submitted that it is a clear case of change of opinion and such reopening is bad in law. In support of this, Ld. Counsel relied upon judgement of the Hon'ble Supreme Court in the case of CIT Vs. Kelvinator of India Ltd. (2010) 187 Taxman.com 312. Further, he contended that mandatory approval by CIT is sine-qua-non and if it is not obtained would vitiate the proceedings. He contended that CIT has not applied his own mind and merely approved the proposal of the assessing officer. He further contended

that the A.O. failed to apply the mind which is apparent from the fact that in the reasons recorded by the A.O., he has stated mistake, such mistakes propose non-application of mind by the A.O. and also by approving authorities.

5. Ld. D.R. opposed these submissions of the assessee and supported the orders of the authorities below.

6. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. We find that before Ld. CIT(A), the assessee had taken a specific ground No.5 challenging the legality of reopening of assessment and the Ld. CIT(A) has decided the ground so raised in para-4.2 of his order as under:

*“Ground No.5: Through this ground the appellant has challenged the issuing of notice u/s 148 of the I.T. Act. The original assessment has been passed on 11.12.2008. It came to the notice of the A.O. that income more than 1 lakhs has been escaped from the assessment. Therefore, notice u/s 148 was issued to the appellant on 29.12.2011. The reasons recorded for issuing the notice has been furnished to the appellant. Subsequently notices u/s 143(2) and 142(1) were issued. The appellant complied with the above*

*notices. The A.O. has followed the procedure for issuing the notice u/s 148 of I.T. Act therefore, the action of the A.O. justifiable. Therefore, appeal on this ground is **dismissed.**”*

7. From the above finding of the Ld. CIT(A), it is evident that the order is ex-facie non-speaking. The Ld. CIT(A) has not considered the objection of the assessee. During the course of hearing, Ld. Counsel for the assessee has taken additional ground against the reopening of the assessment. After considering the totality of the facts, we set aside the order of the Ld. CIT(A) and restore the ground No.1 and additional grounds 5, 6, 7 & 8 to the file of the Ld. CIT(A) to decide these issues afresh by way of speaking order. Needless to say, the Ld. CIT(A) would give reasonable opportunity to the assessee

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

*Order was pronounced in the open court on 07.03.2019.*

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Sd/-  
(KUL BHARAT)  
JUDICIALMEMBER

Indore; दिनांक Dated : 07/03/2019  
VG/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard  
file.

By order

**Assistant Registrar, Indore**

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