

IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH "S.M.C." NEW DELHI]

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER, S.M.C.

आ.अ.सं./I.T.A No. 3423/Del/2019

निर्धारणवर्ष/Assessment Year: 2010-11

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| Shri Satyawan, S/o. Shri Gopi, V & PO : Baliati, Tehsil : Bawani Khera, Bhiwani, Haryana - 127 032. | बनाम Vs. | Income Tax Officer, Ward : 2, Bhiwani. |
| PAN No. CGVPS7365F | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

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| निर्धारितकीओरसे /Assessee by : | Shri Subhash Chander Jindal,Adv. |
| राजस्वकीओरसे /Revenue by : | Shri Om Parkash, Sr. D. R.; |

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| सुनवाईकीतारीख/ Date of hearing: | 18/05/2022 |
| उद्घोषणाकीतारीख/Pronouncement on : | 20/06/2022 |

आदेश /ORDER

PER C. N. PRASAD, J.M. :

1. This appeal is filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals), Hisar [hereinafter referred to CIT (Appeals)] dated 27.12.2018 for assessment year 2010-11.
2. The assessee in his appeal raised the following grounds:-

“1. That the Id. CIT (Appeals) has erred in law and on facts in sustaining the ad hoc addition of Rs.886503.00 on the ground of disallowance 25 percent of all the expenses including license fee paid to the Excise and Taxation Department, Haryana, ignoring and without considering the vital evidence i.e. the certificate of Excise and Taxation Department regarding license fee paid.

2. That the Id. CIT (Appeals) has erred in law and on facts in confirming the addition of Rs.385000.00 of opening capital as at the opening of 01.04.2009, closing balance of capital pertaining to financial year 2008-09 which is not relevant to the year in which the addition is made. The CIT (A) has erred in the facts in observing the last year accounts were not audited, it is because no business was done in the last year. Therefore, the addition made is illegal and liable to be deleted.

3. That the Id. CIT (Appeals) has erred in law and facts of the case in confirming the addition of license fee of Rs.326000.00 relevant to the financial year 2009-10 which was paid on 23.03.2009 amounting to Rs.163000.00 and on 30.03.2009 amounting to Rs.163000.00 to the Department and debited in current year, ignoring the document produced. Therefore, the unjustified addition is liable to be deleted.

4. That the Id. CIT (Appeals) has gone wrong in not cancelling the assessment when there was no addition on the ground on which the reassessment proceeding was initiated. The CIT (Appeals) should have cancelled the assessment order on this ground alone. Therefore, the addition is illegal and liable to be deleted. “

3. The Id. Counsel for the assessee, at the outset, referring to grounds of appeal No. 4 submits that assessee is challenging the very validity of assessment made by the Assessing Officer as the assessment was reopened for escapement of income on account of cash deposits made into bank account of State Bank of India by the assessee and whereas while completing the assessment the Assessing Officer made various disallowances of expenses other than the reason for which the assessment was reopened. The Id.

Counsel for the assessee submits that the assessment was reopened for verification of financial transactions that the assessee has made cash deposits into bank account and whereas while completing the assessment no such addition was made. The ld. Counsel placing reliance on the decision of the Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Limited Vs. CIT (ITA. No. 148/2008) dated 3rd June, 2011 submits that if no addition is made for which the assessment was reopened other additions made other than the addition for which the reopening was made will not survive.

4. The ld. DR supported the orders of the authorities below.

5. Heard rival contentions perused the orders of the authorities below and the decisions relied upon. In the assessment order the Assessing Officer recorded the reasons for reopening of assessment as under:-

“As per information available on AST system, the assessee during the F. Y. 2009-10 has made cash deposits of Rs. 6868705/- in his bank a/c No. 30726919969 maintained with State Bank of India, Hansi.

As per office record, the assessee has not filed his return of income for the F.Y. 2009-10 relevant to A.Y. 2010-11. A verification letter was issued on 17.03.2017, but no response has so far been received in this regard. Therefore, the sources of cash deposits of Rs.6868705/- remained unexplained. Hence, income of Rs.6868705/- remained undisclosed and has escaped assessment.

i have, therefore, reasons to believe that the income of Rs.6868705/- has escaped assessment for the assessment year 2010-11 and also any other income chargeable to tax which has escaped assessment within the meaning of section 147 of the income tax Act, 1961.”

6. A plain reading of the reasons recorded the Assessing Officer has reason to believe that the income of the assessee has escaped assessment in respect of cash deposits of Rs.68,68,705/- as they were remained unexplained. However, while completing the assessment the Assessing Officer disallowed 25% of purchases for want of bills and vouchers. The Assessing Officer also disallowed opening capital shown by the assessee in his capital account as no explanation was offered by the assessee. There is one more addition which was made by the assessee is in respect of license fee paid by the assessee for want of supporting documents. Other than these three additions there is no other addition or disallowance made by the Assessing Officer, which relates to cash deposits by the assessee made into his bank account. In other words, the Assessing Officer did not make any addition for which the assessment was reopened.

7. In the case of Ranbaxy Laboratories Limited Vs. CIT (supra) the following question came up for adjudication by the Hon'ble Delhi High Court:-

“ Whether on facts the Tribunal was right in law in holding that the assessing Officer had jurisdiction to reassess issues other than the issues in respect of which proceedings were initiated especially when the reasons for the latter ceased to survive? “

The Hon'ble Delhi High Court considering the decision of the Hon'ble Bombay High Court in the case of CIT Vs. M/s. Jet Airways (I) Limited (2011) 331 ITR 236 (Bom.) held that if the Assessing Officer does not make any addition on the primary ground on the basis of which proceedings under Section 147 were initiated he cannot make other additions. While holding so the Hon'ble High Court held as under:-

“14. The Bombay High Court also discussed the case of **Jaganmohan Rao** (supra) and **Sun Engineering** (supra) of the Apex Court. In the case of **Sun Engineering** (supra) the issue before the Supreme Court was whether in the course of reassessment on an escaped item of income could an assessee seek a review in respect of an item which stood concluded in the original order of assessment. The Supreme Court dealt with the provisions of Section 147, as they stood prior to the amendment on 1st April, 1989. In this context, the Supreme Court held that the expression "escaped assessment" includes both "non-assessment" as well as "under-assessment". The expression "assess" was defined as referring to a situation where the assessment is made for the first time under Section 147, whereas "reassess" as referring to a situation where the assessment has already been made, but the Assessing Officer has reason to believe that there is under assessment on account of the existence of any of the grounds stipulated in Section 147. The Supreme Court referred to the judgment in the case of **Jaganmohan Rao** (supra) wherein it was held that the object of Section 147 enures to the benefit of the Revenue and it is not open to the assessee to convert the reassessment proceedings as an appeal or revision and thereby seek relief in respect of items which were rejected earlier or in respect of items not claimed during the course of the original assessment proceedings.

15. In **Dr.Devendra Gupta's** case {supra}, learned Tribunal has relied upon the judgment of the Punjab & Haryana High Court, in **Atlas Cycle Industries** case (supra), and concluded that the basic condition is, that the AO has reason to believe, that any income chargeable to tax has escaped assessment, for any assessment year, and it was found, that the section puts no bar on the powers of the AO, to put to tax, any other income, chargeable to tax, which has escaped assessment, and which subsequently comes to his notice, in the course of the proceedings, but then, the prefixing words "and also", which succeeded "any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of ss. 148 to 153, assess or reassess such income". This expression was found to be making clear, that existence of the income, for which the AO formed belief, to have escaped assessment, is a precondition, for including any other income chargeable to tax, escaping assessment, and coming to the notice of the AO subsequently, in the course of the proceedings. Thus, unless and until such income, as

giving rise to form belief, for escaping assessment, continues to exist, and constitutes a subject-matter of assessment, under s.147 "no other income" coming to the notice of the AO, during the course of the proceedings, can be roped in.

16. In the case In the case of **C.J. International Hotels Ltd.** (*supra*) before the Tribunal, the facts were almost similar as in the present case. The Tribunal relied upon the case of **Commissioner of Income Tax v. Shri Ram Singh** (*supra*) while holding that the Assessing Officer was justified in initiating the proceedings under Section 147/148 , but then, once he came to the conclusion, that the income, with respect to which he had entertained, his jurisdiction came to a stop at that, and did not continue to possess jurisdiction, to put to tax, any other income which subsequently came to his notice, in the course of the proceedings, which were found by him, to have escaped assessment.

17. Now, coming back to the interpretation which was given by the Bombay High Court to Sections 147 and 148 in view of the precedent on the subject. The Court held as under:-

"11. ... Interpreting the provision as it stands and without adding or deducting from the words used by Parliament, it is clear that upon the formation of a reason to believe under Section 147 and following the issuance of a notice under Section 148, the Assessing Officer has the power to assess or reassess the income which he has reason to believe had escaped assessment and also any other income chargeable to tax. The words "and also" cannot be ignored. The interpretation which the Court places on the provision should not result in diluting the effect of these words or rendering any part of the language used by Parliament otiose. Parliament having used the words "assess or reassess such income and also any other income chargeable to tax which has escaped assessment", the words "and also" cannot be read as being in the alternative. On the contrary, the correct interpretation would be to regard those words as being conjunctive and cumulative. It is of some significance that Parliament has not used the word "or". The Legislature did not rest content by merely using the word "and". The words "and" as

well as "also" have been used together and in conjunction."

Evidently, therefore, what Parliament intends by use of the words "and also" is that the Assessing Officer, upon the formation of a reason to believe Under Section 147 and the issuance of a notice under Section 148(2) must assess or reassess: (i). 'such income'; and also (ii) any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under the section. The words 'such income' refer to the income chargeable to tax which has escaped assessment and in respect of which the Assessing Officer has formed a reason to believe that it has escaped assessment. Hence, the language which has been used by Parliament is indicative of the position that the assessment or reassessment must be in respect of the income in respect of which he has formed a reason to believe that it has escaped assessment and also in respect of any other income which comes to his notice subsequently during the course of the proceedings as having escaped assessment. If the income, the escapement of which was the basis of the formation of the reason to believe is not assessed or reassessed, it would not be open to the Assessing Officer to independently assess only that income which comes to his notice subsequently in the course of the proceedings under the section as having escaped assessment. If upon the issuance of a notice under Section 148(2), the Assessing Officer accepts the objections of the assessee and does not assess or reassess the income which was the basis of the notice, it would not be open to him to assess income under some other issue independently. Parliament when it enacted the provisions of Section 147 with effect from 1st April 1989 clearly stipulated that the Assessing Officer has to assessee or reassess the income which he had reason to believe had escaped assessment and also any other income chargeable to tax which came to his notice during the proceedings. In the absence of the assessment or reassessment the former, he cannot independently assess the latter."

Section 147 has this effect that the Assessing Officer has to assessee or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which comes to his notice during the course of the proceedings. However, if after issuing a notice under Section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under Section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee.

18. We are in complete agreement with the reasoning of the Division Bench of Bombay High Court in the case of Jaganmohan Rao (supra). We may also note that the heading of Section 147 is "income escaping assessment" and that of Section 148 "issue of notice where income escaped assessment". Sections 148 is supplementary and complimentary to Section 147. Sub-section (2) of Section 148 mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) thereof mandates service of notice to the assessee before the Assessing Officer proceeds to assess, reassess or recompute escaped income. Section 147 mandates recording of reasons to believe by the Assessing Officer that the income chargeable to tax has escaped assessment. All these conditions are required to be fulfilled to assess or reassess the escaped income chargeable to tax. As per explanation (3) if during the course of these proceedings the Assessing Officer comes to conclusion that some items have escaped assessment, then notwithstanding that those items were not included in the reasons to believe as recorded for initiation of the proceedings and the notice, he would be competent to make assessment of those items. However, the legislature could not be presumed to have intended to give blanket powers to the Assessing Officer that on assuming jurisdiction under Section 147 regarding assessment or reassessment of escaped income, he would keep on making roving inquiry and thereby including different items of income not connected or related with the reasons to believe, on the basis of which he assumed jurisdiction. For every new issue

coming before Assessing Officer during the course of proceedings of assessment or reassessment of escaped income, and which he intends to take into account, he would be required to issue a fresh notice under Section 148.

19. In the present case, as is noted above, the Assessing Officer was satisfied with the justifications given by the assessee regarding the items viz., club fees, gifts and presents and provision for leave encashment, but, however, during the assessment proceedings, he found the deduction under Section 80 HH and 80-1 as claimed by the assessee to be not admissible. He consequently while not making additions on those items of club fees, gifts and presents, etc., proceeded to make deductions under Section 80HH and 80-1 and accordingly reduced the claim on these accounts.

20. The very basis of initiation of proceedings for which reasons to believe were recorded were income escaping assessment in respect of items of club fees, gifts and presents, etc., but the same having not been done, the Assessing Officer proceeded to reduce the claim of deduction under Section 80 HH and 80-1 which as per our discussion was not permissible. Had the Assessing Officer proceeded not to make dis-allowance in respect of the items of club fees, gifts and presents, etc., then in view of our discussion as above, he would have been justified as per explanation 3 to reduce the claim of deduction under Section 80 HH and 8-1 as well.

21. In view of our above discussions, the Tribunal was right in holding that the Assessing Officer had the jurisdiction to reassess issues other than the issues in respect of which proceedings are initiated but he was not so justified when the reasons for the initiation of those proceedings ceased to survive. Consequently, we answer the first part of question in affirmative in favour of Revenue and the second part of the question against the Revenue. “

8. The ratio of the decision of the Hon'ble Delhi High Court squarely applies to the facts of the case since the Assessing Officer did not make any addition for which the reopening was made. The Assessing Officer made various other additions

other than the addition for which the assessment was reopened. In view of the above, respectfully following the above decision of the jurisdictional High Court, I hold that the reassessment order passed by the Assessing Officer under Section 143(3) read with Section 147 of the Act is bad in law and the same is quashed on this ground. Ground No. 4 of grounds of appeal is allowed.

9. Since the reassessment order has been quashed on the preliminary ground, the other grounds raised by the assessee on merits are not gone into as they become only academic at this stage.

10. In the result, the appeal of the assessee is allowed as indicated above.

Order pronounced in the open court on : 20/06/2022.

Sd/-
(C. N. PRASAD)
JUDICIAL MEMBER

Dated : 20/06/2022.

MEHTA

Copy forwarded to :

1. Appellant;
2. Respondent;
3. CIT
4. CIT (Appeals)

5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi.

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| Date of dictation | 15.06.2022 |
| Date on which the typed draft is placed before the dictating member | 16.06.2022 |
| Date on which the typed draft is placed before the other member | 20.06.2022 |
| Date on which the approved draft comes to the Sr. PS/ PS | 20.06.2022 |
| Date on which the fair order is placed before the dictating member for pronouncement | 20.06.2022 |
| Date on which the fair order comes back to the Sr. PS/ PS | 20.06.2022 |
| Date on which the final order is uploaded on the website of ITAT | 20.06.2022 |
| Date on which the file goes to the Bench Clerk | 20.06.2022 |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the order | |