

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.3775/Del./2018
Assessment Year 2008-2009

Shri Subash Sharma, Dehradun. PAN ASLPS5405J C/o.M/s. RRA TAXINDIA D-28, South Extension, Part-I, New Delhi – 110049.	vs.	The Income Tax Officer, Ward -2(4), Dehradun.
(Appellant)		(Respondent)

For Assessee :	Shri Somil Aggarwal, And Shri Rakesh Gupta, Advocates
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	28.02.2019
Date of Pronouncement :	08.03.2019

ORDER

This appeal by assessee has been directed against the order of Learned CIT(A), Haldwani, Dated 21st March 2018, for the assessment year 2008 2009, challenging the reopening of the assessment under section 147/148 of the Income Tax Act, 1961, the addition of Rs.25 lakhs treating the income of assessee as received from M/s. Yukti

Construction Pvt. Ltd., and addition of Rs.8,570/- on account of interest.

2. The assessing officer noted that assessee has filed return of income originally on 21st August, 2008 declaring taxable income of Rs.4,66,647/-. Subsequently, information was received from DCIT, Circle-1, Dehradun that assessee was in receipt of Rs.25 lacs from M/s. Yukti Construction Pvt. Ltd., in the year under consideration, but, the same was not disclosed in the return of income. Accordingly notice under section 148 of the I.T. Act, 1961, was issued to the assessee on 20th March, 2015, after obtaining approval of the JCIT. The Assessing Officer noted that assessee entered into an agreement with M/s. Yukti Construction Pvt. Ltd., vide Agreement Dated 27th March, 2006, according to which, the assessee had to procure about 20,000 Bigas of land for M/s. Yukti Construction Pvt. Ltd. In pursuance to this agreement, assessee received Rs.12,62,50,000/- in assessment year 2007-2008 and Rs.25 lacs received in assessment year 2008-2009 under appeal. The Assessing Officer noted that since assessee could not fulfill the

conditions of the Agreement, the matter was settled through Award passed by Hon'ble Mr. Justice Rajesh Tandon on the basis of mutual understanding between the parties. The explanation of assessee was called for, in which, it was explained that the amount received was advance money which was to be used as per the conditions of Agreement, therefore, it is not income of assessee. The amount was given for procurement of the land on behalf of the company. The statement of assessee was recorded during the course of survey, in which, he has similarly explained the facts. The assessing officer was, however, not satisfied with the explanation of assessee and noted that assessee's claim of incurring the amount of Rs.25 lacs for fulfilment of the conditions of Agreement is not substantiated and is not acceptable. Accordingly, the A.O. added Rs.25 lacs to the income of assessee along with income from other sources of Rs.8,570/- and completed the assessment under section 143(3)/148 of the I.T. Act, 1961, Dated 22nd March, 2016. The Learned CIT(A), however, dismissed the appeal of assessee.

3. Learned Counsel for the Assessee submitted that assessing officer has recorded following reasons for reopening of the assessment :

“Reasons for initiating action under section 147 of the Income Tax Act, 1961-

There is information with the department that the assessee received Rs. 12.86 crores from Yukti Construction in the previous year relevant to assessment year 2007-08. The assessee further received Rs.25 lakh from Yukti Construction during the previous year relevant to assessment year 2008-09. The assessee filed his return of income on 21.8.2008 vide R.No.3613 declaring income of Rs.4,66,647/-. The assessee has not disclosed this transaction of Rs.25 lakh in his return of income. The AO while completing the assessment of the assessee for A.Y. 2007-08 has noted in the office Note that the assessee received Rs.25 lakh in the F.Y. 2007-08 relevant to A.Y. 2008-09.

I have, therefore, reasons to believe that the income of Rs.25 lakh chargeable to tax has escaped assessment. In order to assess the same, necessary permission may kindly be accorded for issue of notice u/s 148.”

4. He has submitted that the amount was received as advance which could not be treated as income of the assessee. He has submitted that in A.Y.2007-2008, the assessing officer passed the reassessment order under section 143(3)/148 on dated 26th March, 2014 i.e., prior to reopening of the assessment in the assessment year under appeal, in which, Rs.12.86 crores was considered as advance. However, the A.O. made the addition of Rs.68,80,485/-. He has, therefore, submitted that advance amount could never be treated as income of the assessee, therefore, reopening of the assessment is illegal and bad in Law. He has referred to PB-98, which is, notice under section 148 dated 20th March, 2015.

5. On the other hand, Learned Departmental Representative relied upon the orders of the authorities below.

6. After considering rival submissions, I am of the view that reopening of the assessment is bad in Law. It is well settled that validity of the re-assessment proceedings shall have to be determined with reference to the reasons recorded for reopening of the assessment. The A.O. recorded reasons for reopening of assessment as reproduced above and issued notice under section 148 on 20th March, 2015. In the reasons, the A.O. has mentioned that assessee has received Rs.25 lacs from M/s. Yukti Constructions Pvt. Ltd., in assessment year under appeal and in preceding assessment year 2007-2008, assessee has received Rs.12.86 crores from M/s. Yukti Constructions Pvt. Ltd., The A.O. noted that the transaction is not disclosed in the return of income, therefore, income chargeable to tax has escaped assessment. Learned Counsel for the Assessee filed copy of the assessment order for a preceding A.Y. 2007-2008 dated 26th March, 2014 under section 143(3)/148 of the Income

Tax Act. This order was passed prior to recording reasons for reopening of assessment in assessment year under appeal. In the assessment order for preceding A.Y. 2007-2008, the A.O. has recorded the same facts and ultimately, accepted the explanation of assessee that assessee has received the amount of Rs.12,62,50,000/- as advance and explanation of assessee that the amount in question was spent as per the Agreement was substantially accepted and for the small amount where the assessee could not furnish explanation, the addition of the part amount was made. The A.O, however, in the reasons for reopening of the assessment has mentioned incorrect figure of Rs.12.86 cross received by assessee from M/s. Yukti Construction Pvt. Ltd., in preceding assessment year 2007-2008. Since, assessee received the amount in question as advance from the company as per the Agreement for procurement of the land on behalf of the company, therefore, the entire amount can never be the income of the assessee, at least, the entire advance could never be the income of assessee. Since the assessing officer has accepted the explanation of assessee in

preceding assessment year 2007-2008 in scrutiny assessment on 26th March, 2014, therefore, no justification for the assessing officer to record reasons in assessment year under appeal that "*Income chargeable to tax has escaped assessment*" on identical facts. There was thus, no basis for the assessing officer to record reasons that Income chargeable to tax has escaped assessment. There were no justification for the assessing officer to initiate the reassessment proceedings under section 148 of the Income Tax Act, 1961. Thus, it is a case of non-application of mind on the part of the assessing officer to record such reasons for initiating reassessment proceedings. Thus, the initiation of reassessment proceedings is illegal and bad in law. I. Accordingly. set aside the orders of the authorities below and quash the reopening of the assessment in the matter. In the result, all the additions stand deleted.

7. In the result, appeal of assessee allowed.

Order pronounced in the open Court.

Delhi, Dated 08th March, 2019
VBP/-

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi