

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

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.7331/Del./2018  
Assessment Year 2009-2010

Vibhut Builders & Engg. Pvt. Ltd., New Delhi – PIN-110053 PANAACCV7326D C/o. R.K. Govil & Co., C.As. 4-Kiran Enclave, G.T.Road, Ghaziabad.	vs.	The Income Tax Officer, Ward – 26 (2), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Anoop Sharma, And Shri Sahil Sharma, Advocates
For Revenue :	Shri Pradeep Singh Gautam, Sr. D.R.

Date of Hearing :	11.11.2019
Date of Pronouncement :	11.11.2019

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by assessee has been directed against the Order of the Ld. CIT(A)-9, New Delhi, Dated 17.08.2018, for the A.Y. 2009-2010, challenging the reopening of the assessment and addition of Rs.4,57,132/- under section 14A of the I.T. Act, 1961.

2. I have heard the Learned Representative of both the parties.

3. It is well settled Law that validity of the reopening of the assessment is to be determined with reference to the reasons recorded for reopening of the assessment. Learned Counsel for the Assessee filed copy of the reasons for reopening of the assessment at page-38 of the paper book which reads as under :

*Annexure-A*

*“M/s. Vibhut Builders & Engg. Pvt. Ltd. (PAN AALCV7326D)*

*ASSESSMENT YEAR 2009-10*

*In this case, information was received from the office of ADIT (Inv.), Unit-II, Ghaziabad vide its Letter F.No.ADIT(Inv.)-II/6ZB/STRs/2011-12 dated 23.03.2012 that in this case, a STR No. 1000003767 was received and in his report, the ADIT (Inv.)-II, Ghaziabad has reported as under :*

*“The assessee has undertaken off market transactions of 7000 shares of Era Infra Engineering Ltd. valued at Rs.35 lacs. Besides this, during the year, the assessee has made investment in the shares of M/s. GMR Infra Ltd. and M/s. G.T.L. Infra Ltd.*

*The source of investment in share trading was stated to be short term loan from corporate companies amounting to Rs.3,70,00,000/-.”*

*M/s. Vibhut Builders & Engg. Pvt. Ltd. has not filed its return of income for the assessment year 2009-10.*

*After perusal of the above mentioned information & facts and since the returned was not filed by the assessee, I have reason to believe that an income of at least Rs.35,00,000/- for A.Y. 2009-10 has escaped from assessment. Approval for initiating proceedings u/s 147 r.w. 149(1)(b) r.w.s. 151 of the Income Tax is requested from*

*Pr.CIT-9, New Delhi for determination of income of  
the assessee in AY 2009-10.*

*Sd/-Ram Niwas  
Income Tax Officer,  
Ward-26(2), New Delhi.”*

3.1. In these reasons, the A.O. has noted that since assessee has not filed return of income for assessment year under appeal, therefore, he has reason to believe that an income of atleast Rs.35 lakhs has escaped assessment for the assessment year under appeal. Learned Counsel for the Assessee referred to PB-10 which is copy of acknowledgment of return of income filed originally for A.Y. 2009-2010 on Dated 26.09.2009. The assessee filed similar reply before A.O, in which, in response to notice under section 148, the assessee explained that return of income filed originally Dated 26.09.2009 may be treated as return have been filed in response to the notice under section 148 of the I.T. Act, 1961. The A.O. also in the impugned order has mentioned that assessee has filed return of income on 26.09.2009. It is, therefore, clear that A.O. has recorded

wrong reasons for reopening of the assessment that assessee has not filed return of income for A.Y. 2009-2010, this was the sole basis for reopening of the assessment. Thus, the A.O. recorded incorrect facts in the assessment order. Therefore, reopening of the assessment is clearly invalid and bad in law. I rely upon Judgment of Hon'ble Punjab & Haryana High Court in the case of Atlas Cycle Industries 180 ITR 319 in which it was held that "*initiation of re-assessment proceedings is invalid, if the ground on which reopening have been done has disappeared or incorrect reasons have recorded.*" Learned Counsel for the Assessee further stated that A.O. in the reasons recorded has merely mentioned that assessee has undertaken all market transactions of 7000 shares of Era Infra Engineering Ltd., valued at Rs.35 lakhs. Further, the A.O. did not make any such addition in the re-assessment order for which reopening have been done. The A.O. in the assessment order has made disallowance under section 14A only. Learned Counsel for the Assessee relied upon Judgment of Hon'ble Bombay High Court in the case of CIT-5, Mumbai

vs., Jet Airways (I) Ltd., [2011] 331 ITR 236 (Bom.) in which it was held as under :

*“Section 147 of the Income-tax Act, 1961 - Income escaping assessment - Nondisclosure of primary facts - Assessment years 1994-95 and 1995-96 - Whether an Explanation to a statutory provision is intended to explain its content and cannot be construed to override it or to render substance and core nugatory - Held, yes - Whether after insertion of Explanation 3 to section 147 by Finance (No. 2) Act, 2009, with effect from 1-4-1989, section 147 has an effect that Assessing Officer has to assess or reassess income ('such income') which escaped assessment and which was basis of 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 course of proceedings - Held, yes - Whether, however, if after issuing a notice*

*under section 148, he accepts contention of assessee and holds that income, for which he had initially formed a reason to believe that it had escaped assessment, has, as a matter of fact, not escaped assessment, it is not open to him to independently assess some other income; if he intends to do so, a fresh notice under section 148 would be necessary, legality of which would be tested in event of a challenge by assessee - Held, yes*

*Words and phrases : The words 'and also' as occurring.”*

3.2. I also referred to Judgment of Hon'ble Delhi High Court in the case of Ranbaxy Laboratories Ltd., vs. CIT [2011] 336 ITR 136 (Del.) in which it was held as under :

*“The assessee-company was engaged in the business of manufacture and trading of pharmaceuticals products. The Assessing Officer accepted returned income of the assessee but*

*initiated reassessment proceedings under section 147 of the Income-tax Act, 1961, in respect of club fees, gifts presents and provision for leave encashment. While completing the reassessment, however, he did not make additions on account of these items but instead reduced the deductions under sections 80HH and 80-1. The Commissioner (Appeals) held that in the original assessment the powers of the Assessing Officer were limited to the extent of prima facie adjustment only. On the merits of the additions, the Commissioner (Appeals) followed his order of assessment year 1996-97. On appeal the Tribunal held that the assumption of jurisdiction by initiating reassessment proceedings was valid and reassessment could not be annulled. It was a separate issue that after validly assuming jurisdiction the points on which reassessment was proposed were not added/disallowed. At the same time under section 147 the Assessing Officer*



*could also assess such income which had escaped assessment and which comes to his notice subsequently in the course of the proceedings under section 147. On appeal :*

*Held, that section 148 was supplementary and complementary to section 147. Sub-section (2) of section 148 mandates reasons for issuance of notice by the Assessing Officer and sub-section (1) mandates service of notice to the assessee before the Assessing Officer proceeds to assess, reassess or re-compute escaped income. Section 147 mandates recording of reasons to believe by the Assessing Officer that the income chargeable to tax had escaped assessment All these conditions were required to be fulfilled to assess or reassess the escaped income chargeable to tax. Under Explanation 3 if during the course the proceedings the Assessing Officer comes to the 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. For every new issue coming before the 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 afresh notice under section 148. The Assessing Officer was satisfied with the justifications given by the assessee regarding the items of club fees, gifts and presents and provision for leave encashment, but during the assessment proceedings, he found the deduction under sections 80HH and 80-I as claimed by the assessee to be not admissible. He consequently proceeded to make deductions under sections 80HH and 80-I and accordingly reduced the claim on these accounts. The very basis of initiation of proceedings for which reasons to believe were recorded was income escaping assessment in*

*respect of items of club fees, gifts and presents etc., but while these items were not disturbed, the Assessing Officer proceeded to reduce the claim of deduction under sections 80HH and 80-I which was not permissible. 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 were initiated but he was not justified when the reasons for the initiation of those proceedings ceased to survive.”*

3.3. Considering the facts of the case in the light of these decisions, it is clear that the A.O. initiated the re-assessment proceedings because assessee has undertaken off-market transactions of shares of Era Infra Engineering Ltd., for Rs.35 lakhs, therefore, for examining the issue of Rs.35 lakhs, the A.O. initiated the re-assessment proceedings, but, ultimately, no addition have been made of Rs.35 lakhs. Thus, the A.O. recorded wrong reasons in this case. The A.O. instead of making any addition relating to

the reasons recorded for Rs.35 lakhs, made independent addition under section 14A of the I.T. Act, 1961. Thus, both the above decisions clearly apply to the facts and circumstances of the case. There was, thus, no justification for the A.O. to initiate re-assessment proceedings against the assessee. In this view of the matter, I am of the view that reopening of the assessment is invalid and bad in law. I, accordingly, set aside the Orders of the authorities below and quash the reopening of the assessment. Resultantly, appeal of Assessee is allowed. In this view of the matter, there is no need to decide the addition under section 14A which is left with academic discussion only.

4. In the result, appeal of Assessee allowed.

Order pronounced in the open Court.

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 11<sup>th</sup> November, 2019

VBP/-

Copy to

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

// BY Order //

Asst. Registrar : ITAT Delhi Benches :  
Delhi.