

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA BENCH "B", KOLKATA**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
AND SHRI SONJOY SARMA, JUDICIAL MEMBER**

**ITA No.558/Kol/2020
Assessment Year: 2011-12**

DCIT, Kolkata	Circle-13(1),		M/s. Pacharia Exports Pvt. Ltd.
		Vs.	37, Gangananchal Apartment, Dr. Abani Dutta Road, Salkia, Howrah- 711106.
			PAN: AABCP6955D
(Appellant)		(Respondent)	

**Cross-Objection No.29/Kol/2020
(Arising out of ITA No.558/Kol/2020)
Assessment Year: 2011-12**

M/s. Pacharia Exports Pvt. Ltd.			DCIT, Circle-13(1), Kolkata
37, Gangananchal Apartment, Dr. Abani Dutta Road, Salkia, Howrah-711106.		Vs.	
PAN: AABCP6955D			
(Appellant)		(Respondent)	

Present for:

Revenue by : Smt. Ranu Biswas, Addl. CIT
Assessee by : Shri Akkal Dudhwewala, FCA

Date of Hearing : 08.02.2022

Date of Pronouncement : 07.03.2022

ORDER

PER RAJESH KUMAR, ACCOUNTANT MEMBER:

The appeal by the revenue and cross-objection by the assessee are filed against the order dated 16.09.2020 passed by the Commissioner of Income Tax (Appeals)

(hereinafter referred to as the Ld.CIT(A)) which in turn arises out of order passed u/s 143(3) r.w.s. 147 of the Act dated 08.12.2018 by the **Assessing Officer** (hereinafter referred to as the 'AO') relevant to A.Y 2011-12.

2. The revenue has challenged the order of Ld.CIT(A) on merit as the ld CIT(A) has allowed the appeal of the assessee on merits whereas the assessee has challenged the order of Ld. CIT(A) on legal issue which is dismissed by CIT(A) upholding reopening u/s 147 r.w.s. 148 of the Act. The grounds raised by the assessee primarily relate to wrong assumption of jurisdiction by the AO without there being any substantive material and also reopening beyond four years despite the fact that assessee has fully disclosed all materials facts before the AO and therefore, same is invalid in law and has to be quashed.

3. Since the assessee has raised legal & jurisdictional issue in the cross objections filed by it , we are first adjudicating the same. The grounds taken in the cross objections are reproduced below:

(i) That on the facts and in the circumstances of the case, the Ld. CIT(A), Kolkata erred in deleting the addition of Rs 2,00,00,000/- made u/s 68 of the I.T. Act, on account of unsecured loan raised during the year without appreciating the fact that the assessee failed to prove the identity of the parties, genuineness of the transaction and creditworthiness of the parties in respect of the amount credited in its book of accounts on account of unsecured loan.

(ii) That the Department craves leave to add, modify or abrogate the grounds of appeal during the course of hearing of the case.

4. The facts in brief are that the assessee filed the return of income u/s 139(1) on 5.09.2011 declaring a total income of Rs. 32,67,250/- which was processed u/s 143(1) of the Act. Thereafter, the case of the assessee was selected under CASS for scrutiny and the assessment u/s 143(3) was framed vide order dated 24.02.2014 assessing the

total income at Rs. 33,24,220/-. During the course of assessment proceedings, the AO specifically raised a query by issuing the questionnaire dated 26.12.2013 calling upon the assessee vide para 3 of the said questionnaire to furnish the information/details qua the loans taken, and interest payable thereon in a prescribed proforma which was replied by the assessee by filing the details relating to these loans amounts, the copies whereof are filed at page 37 to 40 of the PB and finally the assessment was framed u/s 143(3) accepting the contentions of the assessee qua the money raised. Thereafter the case of the assessee was reopened u/s 147 by issuing notice u/s 148 of the Act dated 29.03.2018 which was duly served on the assessee. The assessee filed its return of income on 14.04.2018. The case of the assessee was reopened on the ground that as per the information from DDIT(Inv), Unit-1(3), Kolkata, the assessee is beneficiary of various accommodation entries to the tune of Rs. 1,50,00,000/-. During the course of course of assessment proceedings u/s 147 r.w.s. of the Act, the assessee was called upon to furnish various details and evidences to prove the genuineness of these transactions and identity and creditworthiness of the lenders which was duly furnished by the assessee. Finally the assessment was framed u/s 143(3) r.w.s 147 of the Act by the AO by making an addition of Rs. 2,00,00,000/- u/s 68 of the Act towards the loans taken by the assessee during the year as unexplained cash credit. Pertinent to mention that in the reasons recorded u/s 148(2) of the Act, the AO referred to ITR filed by the assessee and noted the figure of unsecured loans at of Rs. 20,00,000/- as against the actual amount of Rs. 2,00,00,000/-.

5. Aggrieved assessee challenged the order of AO before the First Appellant Authority on jurisdictional issue as well as on merits. The First Appellate Authority allowed the appeal of the assessee on merit by directing the AO to delete the addition of Rs. 2 crore by holding that the assessee has provided the necessary evidences required to prove the identity, creditworthiness of the lenders and genuineness of the transactions however on the legal issue raised by the assessee no clear findings were given in the appellate order.

6. The Ld. AR vehemently submitted before us that the Ld. CIT(A) has erred in not giving any clear cut findings on the jurisdictional issue raised by the assessee challenging the reopening the assessment u/s 147 of the Act as invalid. The Ld. AR argued that during the original assessment proceeding, the AO specifically raised a query by calling upon the assessee vide questionnaire dated 26.12.2013 to furnish the details of loans taken along with requisite evidences which were duly filed by the assessee. The Ld. AR while drawing the attention of the bench to the reasons recorded u/s 148(2) of the Act submitted that the assessment was reopened without there being any substantive material before the AO. The Ld. AR further argued that the case was reopened after period of 4 years from the relevant assessment year without mentioning in the reasons recorded or without any whisper of failure on the part of the assessee to disclose any material fact relating to the income which has ultimately led to escapement or underassessment. The Ld. AR submitted that under first Proviso to section 147, the case of the assessee can only be reopened if there is a failure on the part of the assessee to disclose all material facts relating to its income materially and truly and not otherwise. In defense, the Ld. AR relied on the following series of decisions:

- “i. New Delhi Television Ltd. vs DCIT (116 taxmann.com 151) (SC)*
- ii. CIT vs Multiplex Trading & Industries Company Ltd. (63 taxmann.com 170) (Delhi HC)*
- iii. Hubtown Ltd. vs DCIT (74 taxmann.com 18) (Bom HC)*
- iv. Dr. Rajivraj Ranbirsingh Choudhary vs ACIT (79 taxmann.com 152) (Guj HC)”*

7. The Ld. AR of the assessee also drew our attention to the notice issued u/s 148 dated 29.03.2018 and the reasons recorded for reopening of assessment copies whereof are filed at page no. 56 to 58 and submitted that the reasons were in fact recorded approximately after 25 days from the date of issuance of notice u/s 148 of the Act. The Ld. AR argued that the notice u/s 148 of the Act was issued on 29.03.2018 whereas the reasons were recorded on 24.04.2018 which is a serious defect in the issuance of the notice and goes to the root of the matter as the very assumption

of jurisdiction by the AO is incorrect because reasons have to precede the issuance of notice. The Id Counsel of the assessee argued that on this count also proceedings as well as the assessment framed u/s 143(3) r.w.s. 147 of the Act deserved to be quashed.

8. Per contra, the Ld. DR relied on the order of AO by submitting that the case of the assessee has validly been reopened after receiving the information from DDIT(Inv), Unit-1(3), Kolkata to the effect that the assessee is a beneficiary of accommodation entries from various parties. The Ld. DR while candidly admitted that there is an apparent mistake by the AO in recording the figure of unsecured loans in the reasons recorded u/s 148(2) which was mentioned at Rs. 20,00,000/- instead of Rs. 2,00,00,000/-, submitted that the reopening was based upon the substantive material in the form of information from DDIT(Inv) Kolkata and therefore the arguments of the AR are devoid of nay merit that there was no substantive materials before the AO. On the anomaly between the dates of issue of notice u/s 148 of the Act and date of recording reasons the Id DR submitted that it is a clerical mistake and may not be taken so seriously. On the third arguments of the Id AR about absence of any whisper about the assessee failure to disclose any material facts relating to income in term of 1st proviso to section 147 of the Act, the Id. DR argued that the AO has recorded the reasons that income has escaped assessment and it is not incumbent upon the AO to specify in the reasons recorded that failure of the assessee. The Ld. D.R finally prayed that the cross objection of the assessee may be dismissed.

9. We have heard rival contentions and perused the material on record carefully. The undisputed facts are that the case of the assessee was reopened u/s 147 of the Act after a period of four years from the end of the assessment year. The proviso to section 147 of the Act which mandates that the re-opening beyond 4 years from the end of relevant assessment year can only made if underassessment or escapement is by reasons of the failure of the assessee to disclose any material facts. Thus

reopening of assessment after expiry of four years can only be made if the condition as laid down in the proviso to Section 147 of the Act are satisfied that is failure on the part of the assessee to truly and fully disclose any material fact or information which ultimately leads to escapement of income. In the present case before us, the assessment was framed u/s 143(3) of the Act vide order dated 24.02.2014. We note that during the course of assessment proceeding, the issue of raising loans has been examined at length by the AO by specifically calling upon the assessee to provide/furnish the details of the loans and advances raised during the year which was duly complied with by the assessee by filing all the details/evidences and the AO, only after examining them, accepted the plea of the assessee as regards the loans raised and accordingly framed the assessment u/s 143(3) of the Act accepting all those transactions. Besides the assessee has made full disclosure of these transactions in the books of account which have been examined at length by the AO during the course of original assessment proceeding. Therefore, the reopening of assessment u/s 147 in the present case, without any reference to failure on the part of the assessee to disclose all facts regarding the said loans in the return of income books of account and also during the assessment proceeding, is not justified and is in violation to proviso to section 147 of the Act. The case of the assessee finds support from the *decision of New Delhi Television Ltd. vs DCIT (supra) wherein it has been held that where the assessee has disclosed all material facts qua the issuance of convertible bonds, thus there was no failure on the part of the assessee to disclose material facts and therefore notice issued to the assessee u/s 147 of the Act after a period of 4 years has been quashed. Similarly in the case of CIT vs Multiplex Trading & Industrial (supra), the Hon'ble Delhi High Court has held that since the assessee has disclosed all the material facts at the time of making assessment, initiation of reassessment proceedings after expiry of four years from the end of relevant assessment year on the basis of report of investigation cannot be sustained and has to be set aside. In this case, the assessment was completed u/s 143(3) and thereafter the AO received the information from Investigation Wing that the assessee has received bogus loans in the form of accommodation entries and on that basis the case of the assessee was*

reopened. In the case of *Rajivraj Ranbirsingh Choudhary vs ACIT (supra)*, the Hon'ble Gujarat High Court as laid down the same ratio. In this case the assessment was framed u/s 143(3) of the Act and the AO accepted the loans taken by the assessee from the family members. The assessment was reopened after a period of more than 4 years on the ground that sources of loan funds were not explained. Considering the facts of the present case before us in the light of the aforesaid decisions, we are inclined to hold that the reopening of assessment is invalid and is accordingly quashed. The cross objection of the assessee is allowed.

10. Since we have allowed the legal issue raised by the assessee in the cross-objection as stated hereinabove, the appeal of the revenue becomes infructuous and is accordingly dismissed.

11. In the result the cross objection filed by the assessee is allowed and appeal by the revenue is dismissed.

Order pronounced in the open court on 07.03.2022.

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Kolkata, Dated: 07.03.2022.
Biswajit, Sr. P.S.

Copy to: The Appellant : DCIT, CIR.-13(1), Kolkata
The Respondent : M/s. Pacharia Exports Pvt. Ltd.
The CIT, Concerned, Kolkata
The CIT (A) Concerned, Kolkata
The DR Concerned Bench

//True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata