

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1	2937/PUN/2016	Electronica Machine Tools Ltd., S.No.608/609/1, Pune Pandharpur Road, Saswad, Taluka, Purandar, Pune- 412301. PAN : AAACE4196L	DCIT, Central Circle-1(1), Pune.	2008-09
2	10/PUN/2017	DCIT, Central Circle-1(1), Pune.	Electronica Machine Tools Ltd., S.No.608/609/1, Pune Pandharpur Road, Saswad, Taluka, Purandar, Pune- 412301. PAN : AAACE4196L	2008-09

Assessee by : Shri Suhas Bora
Revenue by : Shri M. G. Jasnani

Date of hearing : 25.04.2022
Date of pronouncement : 11.05.2022

आदेश / ORDER

PER INTURI RAMA RAO, AM:

These are the cross appeals filed by the assessee as well as by the Revenue directed against the order of ld. Commissioner of

Income Tax (Appeals)- 11, Pune ['the CIT(A)'] dated 03.10.2016 for the assessment year 2008-09.

2. Briefly, the facts of the case are as under :-

The appellant is a company incorporated under the provisions of the Companies Act, 1956. It is engaged in the business of manufacturing of trading in machine tools. Originally, the return of income for the assessment year 2008-09 was filed on 30.08.2008 declaring total income of Rs.3,63,45,820/-. Against the said return of income, the assessment was completed by the Dy. Commissioner of Income Tax, Central Circle-1(1), Pune ('the Assessing Officer') vide order dated 30.12.2015 passed u/s 143(3) of the Income Tax Act, 1961 ('the Act') at a total income of Rs.3,64,26,260/-. Subsequently, the Assessing Officer formed an opinion that the income escaped assessment for the reasons mentioned below and, accordingly, issued a notice u/s 148 of the Act on 28.03.2013 :-

"1) sale consideration of Rs. 1.40 Cr. received against sale of discontinued agency lines to M/s. Electronica High Tech Engineering Pvt. Ltd. and Electronical Mechatronic Systems Ind. P. Ltd. was not offered to tax as Capital Gain u/s.50B of the Act.

2) total written off loan amount of Rs.26.18 lakh claimed as deduction was not disallowed as the said amount had been never offered to tax as income. Further, Interest of Rs.15.30 Lakh claimed as deduction was not disallowed as the same had been capitalized as reported in audit report.

3) Interest of Rs. 15.30 Lakh claimed as deduction was not disallowed as the same had been capitalized as reported in audit report.

Thus, the income of the assessee was understated by it by the above amounts. Therefore, a notice u/s. 148 of the Act dt.28/03/2013 was issued after recording reason to believe that income of the Assessee for the A.Y. 2008-09 has escaped assessment & after getting it approved from the CIT-I, Pune by the then assessing officer. Later, a reference for exchange of information was made in this case by Jt. Secretary FT &TR-I to the Switzerland Tax authorities under an agreement referred to u/s.90 of the Act on 06/02/2015."

3. On receipt of the notice u/s 148, the assessee filed a letter stating that the original return of income filed may be treated as return of income in response to notice u/s 148 of the Act. Subsequently, the assessment was completed by the Assessing Officer vide order dated 23.03.2015 passed u/s 143(3) r.w.s. 147 of the Act at a total income of Rs.5,30,57,460/-. While doing so, the Assessing Officer made an addition in respect of items on which the reasons were recorded.

4. Being aggrieved by the order of assessment, an appeal was filed before the ld. CIT(A), who vide impugned order held that reopening is not valid as the reopening was made on the same set of information which were available with the Assessing Officer at the time of original assessment proceedings. The ld. CIT(A) also dealt on the merits of the additions made in the reassessment proceedings and partly granted relief to the assessee.

5. Being aggrieved by that part of the order of the ld. CIT(A), which is against the assessee, the assessee is in appeal before us.

Being aggrieved by that part of the order of the Id. CIT(A), which is against the Revenue that the reopening is not valid in law, the Revenue is in appeal before us.

6. First, we shall take up the appeal of the Revenue in ITA No.10/PUN/2017 for adjudication as it goes to very root of matter.

ITA No.10/PUN/2017 – By Revenue :

7. The Revenue raised the following grounds of appeal :-

“1) The CIT(A) has erred in law and facts and circumstances of the case holding that reopening the assessment u/s. 147 the Act and re-assessment u/s. 143(3) r.w.s. 147 is without jurisdiction and bad in law without appreciating the fact that the notice u/s. 148 was issued on 28/03/2013 i.e. within the four years from the end of the relevant assessment year.

2) The CIT(A) has erred in law and facts and circumstances of the case holding that reopening the assessment u/s. 147 the Act holding that the earlier Assessing Officer considered the submissions and did not consider it proper to make any addition on this account but nowhere it is written in the original asst. order that the earlier Assessing Officer has considered this issues as the assessee has not brought to tax of Rs.1.40 crs under head capital gain and capitalized the same.

3) The CIT(A) has erred in law and facts and circumstances of the case in holding that the assessment u/s .143(3) r.w.s. 147 of the Act is bad in law whereas confirmed the action of Assessing Officer in making addition of Rs. 26,18,000/- even though the Assessing Officer had not raised issue relating to the addition of Rs. 26,18,000/- during the original assessment u/s. 143(3) dated 30/12/2010.

4) The CIT(A) has erred in law and facts and circumstances of the case in holding that the assessment u/s 143(3) r.w.s. 147 of the Act is bad in law ignoring the decision of Hon'ble Bombay High Court in the case of Eleganza Jewellery Ltd. Vs. CIT.

5) The order of CIT(A) may be vacated and that of the Assessing Officer be restored.

6) The Appellant craves leave to add, amend or alter any of the above grounds of appeal.”

8. The ld. Sr. DR submits that the ld. CIT(A) had, without appreciating the facts and law properly, held that the reassessment notice is bad in law and also ignoring the law laid down by the Hon'ble Bombay High Court in the case of Eleganza Jewellery Ltd. Vs. CIT, 364 ITR 232 (Bom.).

9. On the other hand, ld. AR for the assessee contended that the order of the ld. CIT(A) is correct in law as the reassessment proceedings were not initiated on the basis of very same information as available in the original assessment proceedings.

10. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the validity of the reassessment proceedings. In the present appeal, the original assessment was completed u/s 143(3) vide order dated 30.12.2015 and subsequently, the reassessment proceedings were sought to be reopened for the reasons extracted above supra. The reassessment proceedings were also completed vide order dated 23.03.2015 after making additions in respect of those items on which the reasons were recorded.

On appeal before the ld. CIT(A), ld. CIT(A) held that the reassessment proceedings are held to be illegal by holding that the reassessment proceedings are initiated based on same set of

information as available with the Assessing Officer at the time of original assessment proceedings. The correctness of this finding of the ld. CIT(A) is under challenge before us.

11. We have carefully gone through the order of the ld. CIT(A) and finding rendered by him. The relevant finding recorded by him is extracted in para 13 of the impugned order. We find from reading of the order of the ld. CIT(A) that the ld. CIT(A) after extracting some paragraphs of certain judicial precedents jumped to the conclusion that the reopening was made based on same set of information which was available with the Assessing Officer at the time of original assessment proceedings without discussing as to how the facts of the present case fits into the ratio of the judicial precedents discussed by him. Nor he discussed as to what information was available with the Assessing Officer at the time of original assessment proceedings and what information came to the knowledge of the Assessing Officer enabling him to form an opinion that the income escaped assessment to tax. Thus, the ld. CIT(A) passed the impugned order in very perfunctory manner. It is settled position of law that an appellate authority cannot pass an order without discussing as to how the factual situation of the case fits into ratio of the judicial precedents relied upon. In the

circumstances, we are of the considered opinion that the order of the ld. CIT(A) cannot be sustained in the eyes of law and, accordingly, we restore the matter to the file of the ld. CIT(A) for *de-novo* adjudication of the issue in appeal.

12. In the result, the appeal filed by the Revenue in ITA No.10/PUN/2017 stands partly allowed.

13. Now, we shall take up the appeal of the assessee in ITA No.2937/PUN/2016 for adjudication.

ITA No.2937/PUN/2016 – By Assessee :

14. In the present appeal, the assessee challenges the decision of the ld. CIT(A) sustaining the additions.

15. In the appeal of the Revenue, we have held that the findings of the ld. CIT(A) holding that the reopening is not valid in law, order of ld. CIT(A) is reversed and remitted the matter to the file of the ld. CIT(A) for *de-novo* adjudication. In the circumstances, the present appeal filed by the assessee on merits of addition requires remission to the file of the ld. CIT(A). We clarify that we had not gone into the merits of the additions in the assessment and are kept alive before the ld. CIT(A). Thus, the appeal filed by the assessee in ITA No.2937/PUN/2016 stands partly allowed.

16. Resultantly, the cross appeals filed by the assessee as well as by the Revenue stand partly allowed.

Order pronounced on this 11th day of May, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 11th May, 2022.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-11, Pune.
4. The Pr. CIT (Central), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.