

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'B' : NEW DELHI)

**BEFORE SH. R.K.PANDA, ACCOUNTANT MEMBER
AND**

SH. ANUBHAV SHARMA, JUDICIAL MEMBER

ITA No. 7977/Del/2019
(Assessment Year : 2006-07)

M/s. Escorts Finance Limited 15/5, Mathura Road Faridabad-121 003 PAN –AAACE0763B	Vs.	Dy. Commissioner of Income Tax Circle 11(1), New Delhi
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ITA No. 9122/Del/2019
(Assessment Year : 2006-07)

ITO Ward-8(3), New Delhi	Vs.	M/s. Escorts Finance Limited 15/5, Mathura Road Faridabad-121 003 PAN –AAACE0763B
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. R.M.Mehta, CA
Respondent by	Sh. Vivek Vardhan, Sr. DR

Date of hearing:	28.04.2022
Date of Pronouncement:	05.05.2022

ORDER

PER ANUBHAV SHARMA, JM:

The assessee has filed present appeal against order dated 18.07.2019 in appeal no. 246/14-15 and the revenue has also filed appeal against the same order for the assessment year 2006-07 in appeal pending before Commissioner of Income Tax (Appeal)-34, New Delhi against order dated 28.03.2014 passed

u/s 147 read with section 143(3) of the Income Tax Act, 1961 passed by DCIT, Circle-11(1), New Delhi.

2. The facts in brief are the assessee is engaged in the business of financing vehicle loan. The case was reopened during the year under consideration after getting sanction u/s 151 of the Act and notice u/s 148 of the Act was issued on 26.03.2013. The AO completed the assessment u/s 147 / 143(3) of the Act making addition of Rs. 2,95,61,000/- on account of disallowance of loss on repossessed assets and Rs. 2,25,41,809/- on account of addition of interest on inter-corporate deposits.

3. In appeal before Ld. CIT(A), the appellant had challenged the initiation of assessment proceedings u/s 147 of the Act as assessment was reopened after a period of 4 years on the end of relevant assessment year and this ground was disallowed by the ld. CIT(A).

3.1 In regard to challenge of disallowing claim towards loss on repossessed assets, the appeal was allowed while the ld. First Appellate Authority confirmed the addition made by the ld. AO on account of interest on inter- corporate deposits.

3.2 Further, assessee also challenged the computation of the income by Ld. AO with regard to the matter involving the addition of Rs. 20.61 crores in original assessment as restored by ITAT to the file of AO. The ld. First Appellate Authority observed that the time limit for giving effect of the order of the ITAT expired on 31.03.2017, therefore AO was directed to re-compute the income.

4. Now the assessee has raised following grounds of appeal in ITA No. 7977/Del/2019 :-

1. *“On facts and circumstances of the case and in law, the learned CIT(Appeals) erred in upholding the action of the Assessing Officer of reopening the assessment after a period of four years from the end of*

relevant assessment year without there being any failure on the part of the appellant to disclose the material facts.

1.1 *That the learned CIT(Appeals) erred in not appreciating the fact that there is no mention in the reasons recorded by the learned Assessing Officer about any failure on the part of the appellant to disclose fully and truly all material facts. The learned CIT(Appeals) ought to have quashed the reassessment completed u/s 147/143(3) of Income-tax Act.*

1.2 *On facts and circumstances of the case, the learned CIT(Appeals) has erred in sustaining the addition of Rs.2,25,41,809 made by the Assessing Officer on account of interest on advances not recognized in Profit & Loss Account owing to the said advances becoming doubtful of recovery.*

2. *That each ground of appeal is without prejudice to one another.*

3. *That the appellant reserves to itself, the right to add, alter, amend, substitute and/or withdraw any Ground(s) of Appeal on or before the date of hearing.”*

4.1 Revenue has raised following grounds of appeal in ITA No. 9122/Del/2019, A.Y. 2006-07 :-

“1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition on account of sale of repossessed assets amounting to Rs. 2,95,61,000/- and addition of Rs. 20.61 in original order.

2. The appellant craves leave to add, amend or forego any ground(S) of appeal at any time before or during the hearing of this appeal.”

5. Arguments were heard and record was perused. Primarily the argument of the ld. Representative of the assessee was on the jurisdictional error in reopening the assessment after period of 4 years. It was submitted that all the material facts were already disclosed in the assessment and there was no failure on the part of the assessee. The Ld. AO without recording any reasons invoked powers of reopening u/s 147 of the Act. In this context, he relied the judgments :

i) Ess advertising (Mauritius) S.N.C. Et Compagnie v. ACIT [2021] 437 ITR 1 (Delhi)

ii) Principal Commissioner of Income Tax-2 v. L & T Ltd. [2020] 113 taxmann.com 47 (Bombay)

***iii) director of Income Tax International Taxation-II
vs. Rolls Royce Industrial Power Ltd. [2017] 394 ITR 547
(Delhi)***

5.1. Ld. Representative of the assessee submitted that the assessment order itself shows lack of application of mind as the income allegedly escaped is shown to be 4,07,99,236/- , on account of loss on sale of repossessed assets 2,95,61,000/- and excess reduction 1,12,38,236/-, but addition was made on loss of repossessed assets 2,95,61,000/- and inter-corporate deposits 2,25,41,809/-.

5.1.1 He relied the following judgments :

i) Vanita Sanjeev Anand vs. ITO (Delhi) W.P.(C) 12359 / 2018 & CM APPL. 47876 / 2018

ii) Ankita A. Choksey vs. Income Tax Officer & Others Writ Petition No. 3344 of 2018

iii) Mumtaz Haji Mohmad Memon vs. ITO R/Special Civil Application No. 21030 of 2017 (Gujarat)

to contend that when the assessment order shows non-application of mind for reopening assessment, same cannot be sustained.

5.2 It was also submitted that Ld. AO did not pass separate order on the objection raised by the assessee to the notice issued u/s 148 of the Act violating thereby the mandate of the judgment of Hon'ble Supreme Court of India in the case of **G.K.N. Driveshafts (India) Ltd. vs. ITO (2003) 259 ITR 19(SC)**.

5.3 It was submitted that even otherwise Ld.AO had examined the question of loss on sale of repossessed assets in the original assessment and a review through reassessment cannot be sustained.

5.4 It was specifically pointed out that the Tax Authorities below have relied judgments which were overruled or dissented and were distinguishable on facts.

6. On the other hand, the Ld. DR defended the order of Id. CIT(A) in regard to sustaining addition on account of interest on advances but in regard to appeal of revenue it was submitted that the Ld. CIT(A) had fallen in error in deleting the addition made by AO of loss on repossessed assets submitting that the expenditure is not related to business and Ld. AO had rightly considered it to be a capital loss. It was also submitted that the Id. First Appellate Authority had fallen in error in deleting addition of Rs. 20.61 crores on the basis that the AO had failed to do the re-computation within time.

7. After considering the matter on record and the submissions, it will be appropriate to first take up the question of jurisdiction as raised by the assessee in its appeal as ground no. 1 and 1.1.

8. In this regard, the vital piece of document is the notice u/s 148 of the Act dated 26.03.2013 issued by the Ld. AO and which is on record at page no. 26 and 27. The reasons for notice u/s 148 of the IT Act as observed by the AO are reproduced as below :-

“Reasons for notice u/s 148 of the FT Act 1961

The assessment in the above mentioned case for A.Y. 2006-07 was completed in the month of December, 2008 determining loss of Rs. 18,40,150/-. On perusal of the record it is revealed that as per serial No. 14(b) to the notes to accounts interest amount of Rs. 225 lakhs on advances given to certain companies had not been received and was not recognized as income. As the assessee was following mercantile system of accounting this amount should have been included as income of the assessee. Further, it is also revealed that the assessee has debited an amount of Rs, 2,95,61,000/- to the profit and loss account on account of ‘Loss on sale of Repossessed Assets’. This loss being capital in nature is not an allowable u/s 37(1) of the Act. Thus, the assessee has claimed excess deduction of Rs. 1,12,38,236/-. By doing so, the assessee has not disclosed the assessee has not disclosed its income truly to the extent of Rs. 4,07,99,236/-.

...
Based on the above facts, I have reason to believe that the income of the assessee chargeable to tax Rs. 4,07,99,236/- has escaped assessment. If approved, a notice u/s 148 of IT. Act may be issued to assessee.

Dated :

Sd/-

Dy. Commissioner of Income Tax,
Circle 11(1), New Delhi”

9. Now what can be observed is that as with regard to addition of Rs. 2,25,41,809/- there was no notice to the assessee that the Ld. AO had considered it to be one which escaped assessment and the assessee was only made to explain the expenditure shown of Rs. 4,07,99,236/- on account of loss on sale of repossessed assets and excess deduction. Certainly with regard to additions made on account of interest on inter-corporate deposits, there was no actual show cause notice.

10. It can be further observed from matter on record that in original assessment the question of claim of loss of Rs. 2,95,61,000 /- on sale of vehicles are repossessed by the assessee company from defaulter parties was considered as is manifested by letter dated 23.10.2008 of the assessee addressed to the Ld. AO and the same being on paper book at page no. 7.

11. In judgment relied by Ld AR of Hon'ble Bombay High Court in **Ankita A. Choksey vs. Income Tax Officer & Others Writ Petition No. 3344 of 2018**, It has been held in para 6;

“It is a settled position in law that the Assessing Officer acquires jurisdiction to issue a reopening notice only when he has reason to believe that income chargeable to tax has escaped Assessment. This basic condition precedent is applicable whether the return of income was processed under Section 143(1) of the Act by intimation or assessed by scrutiny under Section 143(3) of the Act. [See Asst. Commissioner of Income Tax v/s. Rajesh Jhaveri Stock Brokers (P) Ltd., (SC) 291 ITR 500 and PCIT v/s. M/s. Shodimen Investments (Bombay) 2018 (93) Taxman.Com 153]. Further, the reasons to believe that income chargeable to tax has escaped Assessment must be on correct facts. If the facts, as recorded in the reasons are not correct and the assessee points out the same in its objections, then the order on

objection must deal with it and prima facie, establish that the facts stated by it in its reasons as recorded are correct. In the absence of the order of objections dealing with the assertion of the Assessee that the correct facts are not as recorded in the reason, it would be safe to draw an adverse inference against the Revenue.

11.1 Relying aforesaid ratio, there is no doubt in the mind of the Bench that at one end the Reasons cited in notice u/s 148 of the Act was erroneous with regard to calling for reassessment in regard to a factor which was already examined in the original assessment. On the other hand, in the assessment order an addition was made in regard to a head for which actually there was no show cause issued. Thus, the bench is of considered opinion that Ld. AO had error in invoking jurisdiction u/s 147 of the Act, therefore, these grounds no. 1 and 1.1 of the assessee are allowed.

12. Since the jurisdictional grounds raised by the assessee have been allowed making the reassessment illegal, the other grounds raised do not require any finding. The re-assessment order dated 28.03.2014 stands set aside with consequential effects.

The appeal of assessee is allowed and that of revenue is dismissed.

Order pronounced in open court on this 5th day of May, 2022.

Sd/-

(R.K.PANDA)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:- 05.05.2022

Binita, Sr.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI