

आयकर अपीलीय अधिकरण न्यायपीठ रायपुर में।
IN THE INCOME TAX APPELLATE TRIBUNAL,
RAIPUR BENCH, RAIPUR

BEFORE SHRI RAVISH SOOD, JUDICIAL MEMBER
AND
SHRI ARUN KHODPIA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 258/RPR/2016

निर्धारण वर्ष / Assessment Year : 2008-09

M/s. Shree Rajendra Engineering Enterprises,
Near IMVA Sub station, Balco Nagar,
Korba (C.G.)-495 678.

PAN : AAIFR2529P

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Korba (C.G.)

.....प्रत्यर्थी / Respondent

Assessee by :Shri Y.K Mishra, Advocate
Revenue by :Shri G.N Singh, DR

सुनवाई की तारीख / Date of Hearing :27.07.2022

घोषणा की तारीख / Date of Pronouncement : 05.08.2022

आदेश / ORDER**PER RAVISH SOOD, JM:**

The present appeal filed by the assessee is directed against the order passed by the CIT(Appeals), Bilaspur dated 28.03.2016, which in turn arises from the order passed by the A.O under Sec.147/148 r.w.s. 143(3) of the Income Tax Act, 1961 (for short 'the Act'), dated 18.02.2014 for assessment year 2008-09. Before us the assessee has assailed the impugned order on the following grounds of appeal:

- “1. That Ld. CIT(A) has erred in law as well as on facts while confirming the jurisdiction u/s.147.
2. That Ld. CIT(A) erred in law as well as facts while confirming addition of Rs.4,01,564/- u/s.40(a)(ia) on account of interest to NBFC's.
3. That the Ld. CIT(A) has erred in law as well as on facts while enhancing addition of Rs.14,54,062/- u/s.69C of the I.T. Act, 1961.
4. That the assessee craves leave to add, alter and amend, modify, substitute, delete and /or rescind all or any of the grounds of appeal on or before the final hearing.”

2. Succinctly stated, the assessee firm which is engaged in the business of a contractor had filed its return of income for the assessment year 2008-09, declaring an income of Rs.17,62,060/-. Original assessment was, thereafter, framed by the A.O vide his order passed u/s.143(3) of the Act, dated 30.12.2010, determining the income of the assessee at Rs.18,72,060/-. Subsequently, the case of the assessee was reopened by

the A.O. u/s.147 of the Act, for the reason that as it had failed to deduct tax at source u/s.194A(3)(iii)(f) of the Act on the interest of Rs.4,01,564/- paid to NBFCs, viz. (i) Magma Leasing Ltd; (ii) Magma Finance; and (iii) Kotak Mahindra, therefore, its claim for deduction of the said interest expenditure was liable to be disallowed u/s.40(a)(ia) of the Act. Notice u/s. 148 of the Act was issued and duly served upon the assessee on 25.01.2014. In compliance, it was requested by the assessee that its return of income filed u/s.139(1) of the Act on 27.09.2008 may be treated as a return filed u/s.148 of the Act. Assessment was, thereafter, framed by the AO vide his order passed u/s.147/143(3), dated 18.02.2014 wherein after disallowing the interest paid to NBFCs of Rs.4,01,564/- the income of the assessee was reassessed by the A.O. at Rs.22,73,620/-.

3. Aggrieved, the assessee carried the matter in appeal before the CIT(Appeals). As the contentions advanced by the assessee regarding the disallowance of interest paid to NBFCs of Rs.4,01,564/- u/s.40(a)(ia) of the Act did not find favor with the CIT(Appeals), therefore, he upheld the addition made by the A.O. Apart from that, the CIT(Appeals) in the course of proceedings before him carried out verifications as regards the authenticity of the sundry debtors as were shown by the assessee firm in its balance sheet for the year under consideration. It was gathered by the CIT(Appeals) that there were discrepancies of Rs.14,54,062/- qua the

balance that was shown by the assessee as recoverable from BALCO, Korba. It was observed by the CIT(Appeals) that while for the assessee had claimed an amount of Rs.38,36,369/- (Dr.) as recoverable from BALCO, Korba, but the latter on the other hand in its books of accounts had shown an amount of Rs.53,40,431/-(Cr) in the account of the assessee firm. As the assessee failed to reconcile the aforesaid discrepancy to the satisfaction of the CIT(Appeals), therefore, he in exercise of the powers vested with him u/s 251(1) of the Act enhanced the income of the assessee by making an addition of Rs.14,54,062/-u/s.69A of the Act. Also, the CIT(Appeals) not finding favor with the view taken by the A.O as regards the quantification of remuneration allowable u/s.40(b) of the Act thus, reworked out the same and disallowed the excess claim for deduction of Rs.3,71,174/-.

4. The assessee being aggrieved with the order of the CIT(Appeals) has carried the matter in appeal before us.

5. We have heard the ld. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions.

6. As the assessee has assailed the validity of the jurisdiction that was assumed by the A.O for framing the assessment u/s.147/143(3), dated 18.02.2014, therefore, we shall first deal with the maintainability of the same. Before proceeding any further, we may herein observe, that the assessee before the CIT(Appeals) had specifically assailed the validity of the jurisdiction that was assumed by the A.O for reopening of its case u/s.147 of the Act, for the reason that the same was done on the basis of an audit objection. Apart from that, it was the claim of the assessee before the CIT(Appeals) that as it had made a full and true disclosure of all material facts, therefore, the A.O had wrongly assumed jurisdiction and reopened its concluded assessment after lapse of a period of four years from the end of the relevant assessment year.

7. Admittedly, it is a matter of fact borne from record that the original assessment in the case of the assessee was framed by the A.O vide his order passed u/s.143(3), dated 30.12.2010, wherein the income of the assessee firm was determined at Rs.18,72,060/-. As such, the reopening of the assessee's case by the A.O vide notice issued u/s.148 of the Act, dated 25.01.2014 is much beyond the period of four years from the end of the relevant assessment year which had lapsed way back as on 31.03.2013. In the backdrop of the aforesaid fact, it was the claim of the Ld. Authorized Representative (for short 'AR') for the assessee that as the assessee had

disclosed fully and truly all material facts necessary for framing of his assessment, therefore, pursuant to framing of the original assessment by the AO u/s.143(3), dated 30.12.2010, its case as per the mandate of the “first proviso” to Sec. 147 could not have been reopened beyond a period of four years from the end of the relevant assessment year. As is discernible from the records the case of the assessee was reopened by the A.O on the basis of the following “reasons to believe” :

“ANNEXURE - A

M/s Shree Rajendra Engineering Enterprises, Near Sub Station, BALCO, Korba
Assessment year - (2008-09)

In this case, the preliminary information are as under :-

Date of filing Return	27.09.2008
Returned Income	Rs.17,62,060/-
Assessed Income	Rs.18,72,060/-
Section under which assessed	143(3) of the I. T. Act, 1961
Date of order	30/12/2010

In the wake of audit objection raised by Internal Audit party (IAP), Bilaspur of the Department, this proposal is being submitted for taking remedial action u/s 147 of the Income Tax Act, 1961 (for short " The Act"). The IAP has raised objection that the assessee has committed default by non-compliance of section 194 A of the Act as it has paid interest amounting totsa01,544/- to different NBFCs namely; Magma Leasing Ltd, Magma Finance Ltd and Kotak Mahindra and has debited the abode interest as expenditure in its Profit& Loss Account. As the above NBFCs are neither banking companies engaged in banking business nor notified institutions u/s 194A(3)(iii)(f) of the Act, the payment of interest to them are subjected to TDS,u/s. 194A the Act. As the assessee has failed to do so , the said payment of interest is liable to be disallowed u/s 40(a)(ia) and added back to the total income. Initially, for taking remedial action, the notice u/s 154 was issued for revising the income by adding the said interest payment of Rs.4,01,564/- but no response to this notice has been given by the assessee. In assessee's own case in A.Y.2009-10 and on the same issue, the assessee has

objected the applicability of section 154 and argued that the issue is debatable and not covered under the purview of section 154. Therefore, with a view to avoiding any legal dispute regarding applicability of suitable section, it has been considered proper and expedient to take recourse of section 147 in place of section 154. It is further submitted that, inadvertently under the impression that the case is within the time limit of four years, the notice u/s 148 has been erroneously issued on 23rd August, 2013 without obtaining your honour's statutory approval required u/s 151(1) of the Act. After obtaining your kind approval, fresh notice u/s 148 will be issued.

2. In view of the facts and circumstances narrated above, your honour is requested to kindly grant the statutory approval u/s 151(1) of the Act so that audit objection may be settled by passing the re-assessment order u/s. 147 read with section 143(3) of the Act.

Sd/-
(O. P. Pathak)
Deputy Commissioner of Income tax
Circle -Korba (C.G.)”

8. Ostensibly, though the case of the assessee was reopened only for the reason that its claim for deduction of interest paid to NBFCs amounting to Rs.4,01,564/- was liable to be disallowed u/s. 40(a)(ia) of the Act, but the A.O in his order had wrongly stated that the reopening of the case was also, inter alia, for the reason to disallow the excess remuneration paid to the partners as per the parameters contemplated u/s. 40(b) of the Act. Be that as it may, we shall herein proceed with the maintainability of the objection raised by the assessee as regards the validity of the jurisdiction that was assumed by the A.O on the basis of the aforesaid “reasons to believe” which forms the very genesis for reopening of its case u/s.147 of the Act.

9. As stated by the Ld. AR, and rightly so, as the assessment in the case of the assessee was originally framed by the A.O u/s.143(3) of the Act, dated 30.12.2010, therefore, as per the mandate of the “first proviso” to section 147 of the Act, the same could not have been reopened after a lapse of four years from the end of the relevant assessment year, unless any income chargeable to tax had escaped assessment for the reason of failure on the part of the assessee to disclose fully and truly all the material facts necessary for his assessment. However, in the case before us, we find that as stated in the aforesaid “reasons to believe”, the case of the assessee was reopened not for any failure on the part of the assessee to disclose fully and truly all the material facts necessary for its assessment, but on the basis of an audit objection raised by Internal Audit Party (IAP), Bilaspur. Apart from that, we find that there is no whisper in the “reasons to believe” that the case of the assessee was being reopened for any failure on its part to disclose fully and truly material facts that were necessary for its assessment for the year under consideration. As the assessment in the case of the assessee which was originally framed by the A.O vide his order passed u/s.143(3), dated 30.12.2010, had thereafter despite there being no failure on its part to disclose fully and truly all material facts necessary for framing of its assessment been reopened u/s.147 of the Act on 25.01.2014, i.e, beyond a period of four years from end of the relevant assessment year, therefore, we concur with the Ld. AR that the same not

being as per mandate of the “first proviso” to Section 147 of the Act, is thus, not maintainable and is liable to be quashed on the said count itself. Our aforesaid conviction is fortified by the following judicial pronouncements:

- (i) Pr. CIT Vs. M/s. Superior Films Pvt. Ltd., ITA No.153 of 2020 dated 19.07.2021 (Del. HC)
- (ii) CIT Vs. Viniyas Finance & Investment Pvt. Ltd., ITA No.271 of 2012, dated 11.02. 2013 (Del. HC)
- (iii) Ananta Landmark Pvt Ltd vs Deputy Commissioner Of Income Tax, WP No.2814 of 2019 dated 14.09.2021 (Bom. HC)
- (iv) Haryana Acrylic Manufacturing Company Vs. CIT (2009) 308 ITR 38 (Del. HC)

10. We, thus, in terms of our aforesaid observations quash the assessment framed by the A.O vide his order passed u/s.143(3)/147, dated 18.02.2014 for want of valid assumption of jurisdiction by him. As we have quashed the assessment for want of valid assumption of jurisdiction by the A.O, therefore, we refrain from advertng to the other contentions that have been advanced by the assessee qua the addition made by the A.O on merits of the case, which, thus, are left open.

11. In the result, appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in open court on 05th day of August,2022.

Sd/-
ARUN KHODPIA
(ACCOUNTANT MEMBER)

Sd/-
RAVISH SOOD
(JUDICIAL MEMBER)

रायपुर/ RAIPUR ; दिनांक / Dated : 05th August, 2022
***SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals), Bilaspur(C.G)
4. The CIT, Bilaspur (C.G)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुरबेंच,
रायपुर / DR, ITAT, Raipur Bench, Raipur.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, रायपुर / ITAT, Raipur.

		Date	
1	Draft dictated on	28.07.2022	Sr.PS/PS
2	Draft placed before author	28.07.2022	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		