

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "C" DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
&  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

I.T.A. No.2752/DEL/2018  
Assessment Year 2008-09

M/s. Glen Propbuild Private Limited, 306-308, Square One, C-2, District Centre, Saket, New Delhi.	Vs.	Deputy Commissioner of Income Tax, Circle-10(1), New Delhi.
TAN/PAN: AACCG7652H		
(Appellant)		(Respondent)

Appellant by:	Shri Salil Kapoor, Adv. Shri Sumit Lalchandani, Adv. Ms. Ananya Kapoor, Adv.		
Respondent by:	Shri Anuj Garg, Sr.D.R		
Date of hearing:	06	04	2023
Date of pronouncement:	17	04	2023

**ORDER**

**PER SHAMIM YAHYA, A.M.**

This appeal by the Assessee is directed against the order of the Commissioner of Income Tax (Appeals)-XXXV, New Delhi ('CIT(A)' in short) dated 29.01.2018 pertaining to the Assessment Year 2008-09.

2. The grounds of appeal raised by the assessee reads as under:

*"Ground No. 1:*

*The Learned Commissioner of Income Tax, Appeal-35, New Delhi (hereinafter referred to as "CIT(A) has erred in law and in the fact in passing the order dated 29th January 2018 under section 250(6) of the Income Tax Act, 1961 (hereinafter referred to as 'The Act').*

*Ground No. 2:*

*The Ld. CIT(A) has failed to appreciate that the reason recorded for reopening the case u/s 147/148 of the Act was just on account of mere change of opinion. There was no omission or failure on part of the Appellant in disclosure of material facts. Therefore, re-assessment deserves to be quashed and annulled as the same is bad in law.*

*Ground No. 3:*

*The Ld. CIT(A) has erred on facts & circumstances of the case and in law by upholding the disallowance made by the Ld. AO on account of total expenditure amounting to Rs.31,91,657 on the contention that appellant has not carried out any business activity during the year under consideration.*

*Ground No. 4:*

*The Ld. CIT(A) has erred in facts & law in not allowing the appellate to capitalize the legal expenses incurred during the year. The said ground is without prejudice to above stated grounds.”*

3. In this case, the assessee was earlier assessed under Section 143(3) on 26.09.2008 at a loss of Rs.31,91,657/-. Thereafter, the present proceedings under Section 147 were initiated. The reasons recorded read as under:

*“From the perusal of the case records it is noticed that during the financial year, assessee had not carried out any business activity and no receipt had been shown during the year. The assessee company neither shown in the balance sheet any finished goods, capital work in progress, expenditure on construction nor any addition in stock in trade. Even no business activity was there, yet the assessee company had claimed expenses of amounting to Rs.31,91,6574. The assessment record was examined and found that the assessee is not doing any business activity and claimed expenses of Rs.31.91.6571- under the head-personal expenses(operating and other expenses. As per provisions of law, if the assessee has not carried out any business activity, the expenses cannot be allowed as deduction. In this case the assessee company did not furnish any details of expenses. Therefore there was failure of the part of assessee to disclose fully and truly all the material facts necessary for relevant assessment year by claiming pre-commence of business expenses.”*

4. The assessee has challenged the validity of reopening

before the Id. CIT(A) by giving plethora of case laws. However, Id. CIT(A) brushed aside all the submissions and held that Assessing Officer has reopened assessment after recording the reason as per the provisions of the Act. Against this order, assessee is in appeal before us.

5. We have heard both the parties and perused the records.

6. Ld. counsel has referred to the reasons for reopening and stated this is a case of reopening under Section 147. Original order was passed under Section 143(3) on 26.09.2008. Ld. counsel however submitted that on the basis of above reasons recorded notice under Section 148 was issued on 31.03.2015. Referring to the said facts, the Id. counsel submitted that reopening has been conducted after four years of the original assessment order. Hence provision to Section 147 clearly becomes applicable. He submitted that as evident from the reasons recorded, there is no information which has come to the knowledge of the Assessing Officer which has lead to the reopening. However, he pleaded that it appears from the perusal of the same case record, the Assessing Officer has come to this opinion that case needs to be reopened. Ld. counsel submitted that this is a clear case of change of opinion not sustainable in law. He submitted that Assessing Officer has not come into any possession of any fresh material warranting reopening. In these circumstances, Id. counsel pleaded that reopening has to be quashed. Hence, it is a change of opinion without any fresh material coming to the possession of Assessing Officer. That the reopening is bad in law and deserves to be quashed. In this

regard, he placed reliance upon the following decisions:

1. *CIT Vs. Kelvinator of India Ltd*, 320 ITR 561
2. *CIT Vs. Kelvinator of India Ltd.*, 256 ITR 1 (Del) [FBI]
3. *CIT Vs. Usha International Ltd.:* 348 ITR 485 (Del) [FB]
4. *CIT Vs. Prima paper and Engineering Industry*, 364 ITR 222 (Bom)
5. *Parixit Industries P. Ltd. Vs. ACIT*, 352 ITR 349 (Guj.)
6. *ACIT Vs. Parixit Industries P. Ltd.:* 25 *Taxmann.com* 301
7. *ACIT Vs. ICICI Securities Primary Dealership Ltd.*, 348 ITR 299 (SC)
8. *Jindal Photo Films Ltd. Vs. DCIT*, [1998] 234 ITR 170 (Del.)
9. *Rose Serviced Apartments (P.) Ltd. Vs. DCIT*, [2012] 348 ITR 452 (Del.)
10. *Asian Paints Ltd. Vs. DCIT:* [2009] 308 ITR 195 (Bom)
11. *Indu Lata Rangwala Vs. DCIT*, [2016] 384 ITR 337 (Del.)
12. *CIT Vs. CIT Vs. Central Warehousing Corporation*, [2015] 371 IT 81 (Del.)
13. *CIT Vs. CIT Vs. Rubix Trading (P) Ltd.*, [2019] 108 *taxmann.com* 177 (SC)
14. *New Delhi Television Ltd. Vs. Deputy Commissioner of Income Tax*, [2020] 424 ITR 607 (SC)
15. *M/s. Anand Developers Vs. ACIT & Anr.*, Writ Petition No. 17 of 2020 dated 18.02.2020.
16. *S.S. Landmarks Vs. ITO* [2020] 117 *taxmann.com* 825 (Bom)
17. *Hindustan Lever Ltd. Vs. R.B. Wadkar:* [2004] 268 ITR 332 (Bom)
18. *Commissioner of Income Tax Vs. Hughes Escorts Communications*, [2009] 311 ITR 253 (Delhi)
19. *Commissioner of Income Tax-IV Vs. Dhoomketu Builders & Development (P.) Ltd.*, [2014] 368 ITR 680 (Delhi)
20. *Commissioner of Income Tax Vs. Whirlpool of India Ltd.*,

(2009] 318 ITR 347 (Delhi).

7. Per contra, ld. DR relied upon the CIT(A)'s order.

8. We have carefully considered the submissions. We note that reopening notice in this case has been issued after four years of the original assessment under Section 143(3) of the Act. Hence, proviso to Section 147 is clearly applicable. The said proviso provides as under:

*“Provided that where an assessment under sub-section (3) of Section 143 or this section has been made for the relevant assessment year, non action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.”*

9. From the above, it is clear that no notice under these sections can be issued unless any income chargeable to tax has escaped assessment in this case. For this purpose, the Courts have held that the material should have a live link and the change of opinion is not sustainable. Since Assessing Officer has doubted upon the assessment only on the basis of observation that from the perusal of case records itself he has observed certain aspects which lead to the reopening. Hence, in our considered opinion, this is a clear case of change of opinion and the re-assessment is liable to be quashed. The case laws referred above duly support the case of the assessee. Accordingly, we hold that the re-assessment is not valid and the same deserves to be quashed. The case laws referred above clearly support the proposition. Since, we have quashed the re-

assessment; the merit of issue is not discussed.

9. In the result, this appeal filed by the assessee stands allowed.

**Order pronounced in the open Court on 17/04/2023.**

Sd/-  
**[ANUBHAV SHARMA]**  
**JUDICIAL MEMBER**

DATED: **17/04/2023**

*prabhat*

Sd/-  
**[SHAMIM YAHYA]**  
**ACCOUNTANT MEMBER**