IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F" DELHI

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

I.T.A. No. 1485/DEL/2014
Assessment Year 2004-05

M/s. Plaza Cable Industries Ltd., K-444, Village Burari, Delhi-110084	vs.	Dy. Commissioner of Income Tax, Circle-14(1), New Delhi.
TAN/PAN: AAACP3946K		
(Appellant)		(Respondent)

Appellant by:	Shri Ravi Pratap Mall, Adv.		
Respondent by:	ShriParikshit Singh, Sr.D.R.		
Date of hearing:	11	04	2022
Date of pronouncement:			2022

O R D E R

PER PRADIP KUMAR KEDIA, A.M.:

The captioned has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-XVII, Delhi ['CIT(A)' in short], dated 26.12.2013 arising from the assessment order dated 04.11.2011 passed by the Assessing Officer (AO) under Section 144 r.w. Section 147 of the Income Tax Act, 1961 (the Act) concerning AY 2004-05.

2. In the captioned appeal, the assessee has raised the grounds of appeal reproduced as under.

"1 That the Id C.IX(Appeals) has grossly erred both in law and on facts in upholding the reassessment proceedings initiated u/s 147/148 of the IX Act, failing to appreciate that the same were void ab initio and without jurisdiction in as much as no notice u/s 148-of the IX Act had been served upon the assessee till the culmination of assessment proceedings, which is mandatory for assumption of a valid jurisdiction,

1.1 That the reassessment proceedings as initiated by the AO and upheld by the Id C.I.T.(Appeals) are wholly illegal and without jurisdiction as the notice u/s 148 of the I.T. Act has not been served in accordance with the provisions contained in section 151(2) of the I.T. Act.

2. That in any case, the Id C.I.T.(Appeals) has erred grossly erred in law and on facts in upholding the disallowance of Rs.19,37,322/- being the alleged prior period expenses. The finding that the appellant has not been able to prove that the expenditure was genuine and incurred wholly and exclusively for the purpose of business, is wholly incorrect and in disregard of the evidence on record and thus Unsustainable.

2.1 That the further finding of the Id C.I.T.(Appeals) that the expenditure did not crystallize during the year under consideration is in complete disregard of the facts of the case and evidence on record and is thus unsustainable.

3. That the ld. CIT(Appeals) has grossly erred in law and on facts in upholding the exparte reassessment framed u/s

144/147 of the IT Act failing to appreciate that the same had been framed in violation of principles of natural justice without granting to the assessee an opportunity of being heard.

It is, therefore, prayed that the reassessment as framed by taking recourse to the provisions of section 147/148 of the I.T. Act be quashed. In any case, the disallowance of Rs.19,37,322/- be deleted."

3. Briefly stated, the assessee filed its return of income declaring a loss of Rs.7,06,97,714/- for Assessment Year 2004-05 in question. The return was subjected to scrutiny assessment and the assessment was completed under Section 143(3) of the Act on 16.11.2006 where the income was assessed in negative at a loss of Rs.7,04,14,520/-. Subsequent to the completion of the assessment under Section 143(3) of the Act, a notice under Section 148 of the Act was issued on 21.07.2010 and the completed assessment under Section 143(3) was thus reopened to include certain income which has allegedly escaped assessment earlier.

4. In the first appeal, the assessee challenged the jurisdiction assumed under Section 147 r.w. Section 148 of the Act and further challenged the disallowance in relation to prior period expenses to the tune of Rs.19,37,322/- in theassessment framed in pursuance of proceedings under Section 147 of the Act. The CIT(A) however did not see any merit in either of the grievances of the assessee and hence dismissed the first appeal.

5. Aggrieved, the assessee preferred appeal before the Tribunal.

6. The reasons recorded for assumption of jurisdiction under challenge is reproduced herein for ready reference.

M/s. Plaza Cable Industries Ltd. A.Y. 2004-05

15.03.2010

Return of income was filed on 30.10.2004 declaring loss of Rs.7,06.97,714. The case was processed u/s. 143(1) on 30.03.05. Assessment u/s. 143(3) was completed on 16.11.2006 at a loss of Rs.7,04,14,520.

It was revealed that the assessee has claimed an expenditure of Rs.19,37,322/- on account of prior period expenses. As the prior period expenses was an inadmissible expenditure, this should be added back to the total income of the assessee.

Considering the fact that time limit for taking action u/s 263 has elapsed and the issue cannot be taken up u/s. 154 also, therefore, remedial action u/s. 147 of the IT Act is proposed in the case in order to assess the assessee's escaped income as pointed out by the Audit.

Your approval for taking the above mentioned remedial action in the matter is solicited in view of the Instruction No. 9/2006.

ACIT CIRCLE 14(1), NEW DELHI"

7. When the matter was called for hearing, the ld. counsel for the assessee adverted to the reasons recorded and submitted that even facially reasons recorded neither meets the conditions of main provisions of Section 147 of the Act nor the 1st proviso thereto as applicable in the instant case where the assessment has been reopened after four years from the end of the Assessment Year and the assessment was earlier made under Section 143(3) of the Act.

8. The ld. DR for the Revenue, on the other hand, relied upon the order of the CIT(A).

9. We have carefully considered the rival submissions. The maintainability of jurisdiction under Section 147 of the Act is central to the controversy in the instant case. On perusal of the reasons recorded under Section 148(2) of the Act qua the alleged escapement as reproduced in paragraph 6 above, it is straightaway noticed that the reasons have been recorded in a most perfunctory manner. The Assessing Officer has not even attempted to met the basic condition of holding "reason to believe" towards alleged escapement at all. The action of the Assessing Officer is highly tentative and non-descript. The Assessing Officer has simply proposed to re-assess the income as pointed out by the audit. There is no belief whatsoever. The process of reasoning for coming to the factum of escapement is sorely missing. The Assessing Officer has resorted to Section 147 of the Act primarily as alternative to Section 263 or Section 154 owing to the admitted fact that the action under Section 263 cannot be taken due to bar of limitation. As further asserted by the Assessing Officer, the rectification under Section 154 also cannot be taken. Such approach of a quasi-judicial authority like the Assessing Officer is totally incomprehensible and innately opposed to the basic cannons of law embedded in Section 147 of the Act. Needless to say, the invocation of jurisdiction under Section 147 is governed by its own set of stringent statutory requirements and is not alternative to the provisions of Section 263 of the Act.

10. Adverting further, as noted earlier, the reopening in the instant case is also governed by the embargo placed by 1st proviso to Section 147 of the Act. A completed assessment is a valuable

right and cannot be lightly ignored. The Assessing Officer has not even cared to allege any kind of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. From the reasons recorded, it is not known, what material facts were not brought on record by the assessee in the course of original assessment. The salutary burden placed on the Assessing Officer under the 1st proviso is not discharged at all. The jurisdiction under Section 147 was exercised in a most flippant and nonchalant manner. It is axiomatic that a reopening of completed assessment is special and extra-ordinary and carries civil consequences. Hence, the Assessing Officer is expected to exercise the jurisdiction under Section 147 with scrupulous care. The completed assessment has been reopened in the instant case in a very cursory manner without satisfying any of the conditions of Section 147 of the Act. Ostensibly, the competent authority under Section 151 of the Act has formed 'satisfaction' of escapement on such flimsy reasons mechanically. Such symbolic compliance of approval of superior authority under Section 151 cannot be countenanced.

11. The jurisdiction assumed under Section 147 in this backdrop is ex-facie vitiated and thus requires to be struck down at the threshold. The impugned assessment framed under Section 147 r.w. Section 143(3) is clearly bad in law in the absence of any valid jurisdiction. Consequently, the impugned assessment order dated 04.11.2011 framed in pursuance of *nonest* jurisdiction stands quashed.

Sd/-

{PRADIP KUMAR KEDIA}
ACCOUNTANT MEMBER

ASSENT ORDER

Per: N K Choudhry, J.M.:

12. Perused the order of the Hon'ble AM, I am in respectful agreement of the conclusion drawn and determination made by Hon'ble AM, only to the extent reproduced below:

> *"That the maintainability of jurisdiction u/s. 147 of the Act is central to the controversy in the instant case and on perusal of the reasons recorded u/s. 148(2) of the Act qua the alleged escapement as reproduced in paragraph No. 6 above, the Assessing Officer has not even attempted to meet the basic conditions of following "reason to believe" towards alleged escapement at all and has simply proposed to re-assess the income as pointed out by the audit. There is no belief, whatsoever.The Assessing Officer has resorted to section 147 of the Act primarily as an alternative to section 263 or section 154 owing to the admitted fact that the action u/s. 263 cannot be taken due to bar of limitation. Needless to say, the invocation of jurisdiction u/s. 147 is governed by own set of stringent statutory requirement and not alternative of the provisions of section 263 of the Act. The reopening in the*

instant case is also governed by the embargo placed by first proviso to section 147 of the Act. The completed assessment is a valuable right and cannot be lightly ignored. The Assessing Officer has not even cared to allege any kind of failure on the part of Assessee to disclose fully and truly all material facts necessary for assessment. From the reasons recorded, it is not known what material facts were not brought on record by the Assessee in the course of original assessment. The solitary burden placed before the Assessing Officer in the first proviso is not discharged at all. The jurisdiction assumed u/s. 147 in this backdrop is ex facie vitiated and thus requires to be struck down at the threshold. The impugned assessment framed u/s. 147 read with section 143(3) is clearly bad in law in the absence of any valid jurisdiction. Consequently, impugned assessment order dated 04.11.2011 framed in pursuance to non-est jurisdiction stands quashed."

Sd/-

{NARENDER KUMAR CHOUDHRY}

JUDICIAL MEMBER

13. In the result, the appeal of the Assessee is allowed.

Order pronounced in the open Court on 02/06/2022.

Sd/-	Sd/-
[NARENDER KUMAR CHOUDHRY]	**[PRADIP KUMAR KEDIA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: **//2022**

Prabhat