

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'E' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.1747/Mum/2024
(Assessment Year :2013-14)**

Karm Infrastructure Private Limited Shop No.L-261, Lower Ground Floor Dreams-The Mall L.B.S. Marg Bhandup (W) Mumbai – 400 078	Vs.	Commissioner of Income Tax (Appeals) NFAC, Delhi
PAN/GIR No.AACCE7513M		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri P.D. Chougule
Date of Hearing	01/07/2024
Date of Pronouncement	03/07/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 12/02/2024 passed by NFAC, Delhi for the quantum of assessment passed u/s.147 for the A.Y.2013-14.

2. None appeared on behalf of the assessee. Accordingly, appeal is being decided on the basis of material on record and the orders of the authorities below.

3. The ld. CIT(A) has dismissed the appeal on the ground that there is no compliance of notices sent by NFAC module and accordingly, he has dismissed the appeal for want of prosecution.

4. The brief facts are that assessee is a company engaged in the business of builder and developer constructing affordable houses for the public. It has declared total income of Rs. 3,59,09,800/-. In this case the assessment was completed u/s.143(3) vide order dated 20/03/2016 accepting the trading result and purchases and sales. Now the case has been reopened u/s.148 vide notice dated on 30/01/2021 on the ground that there were certain payment amounting to Rs.2,66,23,428/- to various parties on account of some fake bills. One such purchase was made from M/s. Shah Steel Corporation and another was from M/s.Swarn Rerolling Mill Pvt. Ltd. From the information in the public domain, it was found that these entities were not filer and therefore, purchases made from two parties is unexplained.

Sr. No.	Name of the Party	Amount paid (in Rs.)	FY in which payment made
1	Mukesh Steel Corporation	2,55,73,016	2012-13
2	Shah Steel Corporation	10,50,412	2012-13
	Total		2,66,23,428

5. The ld. AO has disposed off assessee's objection for reopening without even discussing it in the assessment order and held that assessee had not furnished any substantial

material evidence to prove the genuineness of the transaction and accordingly he added the entire purchases of Rs.2,66,23,428/-.

6. After considering the relevant material on record, we find that already assessment was completed u/s.143(3) vide order dated 20/03/2016 and it appears that the case has been reopened on some ITBA data base where the parties from whom assessee had made purchases were found to be non-filer of GST and simply based on this information, assessment has been reopened u/s. 148 to make the addition on account of purchases which already stood examined earlier as it is part of the trading amount. Nowhere, it has been brought on record that when this information came to the notice of the ld. AO, if the transaction relates to F.Y.2012-13 and reopening has been done almost after nine years from the end of the relevant assessment year. Now, the case is reopened u/s.147 by issuance of notice u/s.148 on 30/01/2021 to reopen the case for the A.Y.2013-14. The time limit for reopening and the assessment as provided u/s.149 as was applicable at the time of issuance of notice u/s.148 is three years from the end of the relevant assessment year and the time limit for 10 years have been provided unless the ld. AO has in his possession books of account or other documents or evidence which reveal that the income chargeable to tax, represented in the form of asset, which has escaped assessment amounts to or is likely to amount to Rs.50,00,000 or more for that year. Here in this case there is no document or evidence revealing income chargeable to tax, represent in the form of an asset. In fact, what

ld. AO has sought to reopen is to disallow the purchases made by the assessee which is an item of a trading account duly reflected in the books and also the quantity of sale of purchases have been accepted alongwith gross profit in the original assessment order u/s.143(3) dated 20/03/2016. Thus, even under the terms of *first proviso* to Section 147 as was then applicable, no reopening can be done after expiry of four years from the end of the relevant assessment year unless any income chargeable to tax has escaped assessment for the reasons of the failure on the part of the assessee to disclose truly and wholly all material facts necessary for the assessment. Here, there is no such failure on the part of the assessee. **Accordingly, in terms of time limit provided in Section 149 and first proviso to Section 147, the reopening itself is bad in law and same is quashed. Accordingly, the entire assessment order is quashed.**

7. In the result, appeal of the assessee is allowed.

Order pronounced on 3rd July, 2024.

Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai; Dated 03/07/2024
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai