

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'C', NEW DELHI**

**BEFORE SH. BHAVNESH SAINI, JUDICIAL MEMBER
AND
SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No.6752/Del/2014 for A.Y. 2006-07

TCG Development India Private Limited, 100 Ground Floor, Okhla Industrial Estate, Phase-III, New Delhi-110020 PAN-AAACT2836J	Vs.	Income Tax Officer, Ward-16(1), New Delhi
(APPELLANT)		(RESPONDENT)

Assessee by	Sh. Atul Ninawat, CA
Revenue by	Ms. Parul Singh, Sr. DR

Date of hearing:	18/11/2020
Date of Pronouncement:	23/11/2020

ORDER

PER ANIL CHATURVEDI, AM:

The present appeal filed by the assessee is directed against the order dated 31.10.2014 of the Commissioner of Income Tax (A)-19 , New Delhi relating to Assessment Year 2006-07.

2. The relevant facts as culled from the material on records are as under:

3. Assessee is a company which is stated to be engaged in Real Estate Development and Project Management Consultancy Services. Assessee filed its return of income for Assessment Year 2006-07 on 06.12.2006 declaring loss of Rs. 4,70,809/-. The case was selected for scrutiny and initially the assessment was framed under section 143(3) vide order dated 30.12.2008 and the returned loss was accepted. Subsequently, the case was reopened under section 147 and notice under section 148 was issued and in response to which assessee vide letter dated 12.04.2013 submitted that the original return filed by it on 06.12.2006 be treated as return of income in response to notice under section 148 of the Act. Thereafter, the case was taken up for scrutiny and consequently the assessment was framed under section 143(3) read with section 147 vide order dated 26.02.2014 and the total income was determined at Rs. 14,52,096/-.

4. Aggrieved by the order of the AO, assessee carried the matter before the CIT(A) who vide order in appeal no. 417/2013-14 order dated 31.10.2014 dismissed the appeal of the assessee. Aggrieved by the order of the CIT(A), the assessee is now before us and has raised the following grounds:-

1. *“The Learned Assessing officer has erred in law by initiating the proceedings u/s 147 of the Income Tax Act 1961 as all the information/details were available during the original assessments and were*

examined by the Ld. AO during the assessment proceedings. No new information/material came to his knowledge to reopen the case as provided in law; but merely on account of change of opinion.

- a) *The reopening u/s 147 itself is bad-in-law, therefore, the order passed by the Ld. AO u/s 148 and sustained by the Ld. CIT(A) is completely arbitrary, unjustified & illegal and should be quashed.*
 - b) *The Learned Assessing officer has erred in law by relying on the case laws, the facts of which are completely different from the facts of the appellant company and on the contrary support the claim of the appellant that proceedings u/s 147 cannot be initiated as no new facts have come to the notice of the assessing officer other than those which were submitted at the time of original assessment by the appellant company.*
2. *The Learned Assessing officer has erred in law while initiating proceedings u/s 147 parallelly when the proceedings u/s 154 were pending on the same issue and were not concluded.*
 3. *The Learned Assessing officer has erred in Law and on the facts of the case in making an addition of Rs. 19,22,905/- was made on account of prior period expenditure/ reversal of consultancy fee. -*
 4. *The Ld. CIT(A) has erred in observing as under and by upholding the additions made by Ld. AO in impugned order:-*
 - a) *Appellant could not explain why the work was not completed even in earlier years, but the appellant showed the entire revenue as his income.*
 - b) *Appellant failed to show that accounting standard 7 is applicable in his case.*
 - c) *Appellant failed to discharge his burden if proof in this regard whereas holding himself in later part of the order that there was no query in respect of change in accounting treatment on original assessment proceedings.*
 - d) *Appellant has not filed any evidence to substantiate his claim that only 60% of work was completed during the year.*
 5. *The Ld. CIT(A) has erred in holding that issue regarding appellant's claim for brought forward losses does not arise from the order challenged in the present appeal.*
 6. *The Ld. CIT(A) has erred in law and facts by not allowing the claim of tax*

deducted at source of Rs. 31,32,351/- claimed as refund while filing the return of income.

7. *The above grounds are without prejudice to each other.”*

5. Before us, at the outset, learned AR submitted before us that though assessee has raised various grounds but the solitary issue is that the assessee is challenging the reassessment proceedings.

6. Before us, learned AR submitted that initially the assessment was framed under section 143(3) vide order dated 06.12.2006 and the total loss of Rs. 4,70,809/- returned by the assessee was accepted by the AO. He submitted that subsequently a notice under section 148 was issued on 15.03.2013. He pointing to the reasons recorded for reopening, which is submitted by the learned DR, pointed out that reason for reopening was that a wrong claim of Rs. 19,22,905/- which was made by the assessee and that was allowed to it was not allowable as expenses. He submitted that the reasons recorded itself shows that the reopening that has been initiated is on account of change of opinion as the claim of prior period expenditure is evident from the fact that after examination of the facts, the claim was allowed by the AO in the assessment order framed under section 143(3) of the Act. He further submitted that during the course of original assessment proceedings, on a query of the AO with respect to the amount of Rs. 19,22,905/-, it was

submitted by the assessee that it was reversal of consulting income as the project against which it was not received was not completed and the details of which were furnished before the AO and in support of which he pointed out to the copy of the letter that was placed before the AO and the copy of which is placed at page 83 of the paper book. He further submitted that the notice under section 148 has been issued beyond a period of four years and when the assessment is sought to be reopened beyond a period of four years than an additional condition needs to be satisfied namely that there must be failure on the part of the assessee to fully and truly disclose all material facts necessary for assessment. He further submitted that in the reasons recorded, there is no allegation on the part of the assessee of failure to disclose material facts and therefore the condition of first proviso of section 147 of the Act has not been satisfied.

7. He therefore, submitted that the reopening for examining the issue which has been examined during the course of original assessment proceedings amounts to change of opinion, which is not permissible under the Act. He therefore submitted that the order of reassessment be set aside.

8. Learned DR on the other hand took us through the order of the CIT(A) and supported the order of the lower authorities.

9. We have heard the rival submissions and perused the material on record. The issue in the present grounds is with respect to reopening of the assessment.

10. The law on re-opening of an assessment under the Act is fairly settled. The Assessing Officer can re-open an assessment only in accordance with the express provisions provided in Section 147/148 of the Act. It is only on the Assessing Officer strictly satisfying the provisions of Section 147 of the Act that he acquires jurisdiction to re-open an assessment. Section 147 of the Act, clothes the Assessing Officer with jurisdiction to reopen an assessment on satisfaction of the following: (a) The Assessing Officer must have reason to believe that (b) Income chargeable to tax has escaped the assessment and (c) In cases where the assessment sought to be reopened is beyond the period of four years from the end of the relevant assessment year, then an additional condition is to be satisfied viz: there must be failure on the part of the Assessee to fully and truly disclose all material facts necessary for assessment. Insofar the present case is concerned, the assessment year is 2006-07. The assessment year ends on 31.03.2007. In this case impugned notice under section 148 of the Act was issued on 15.03.2013 and thus it is a case of re-opening of assessment after expiry of four years. In such a scenario, as per the 1st proviso to Sec.147 of the Act, no action for initiation of re-assessment proceedings for A.Y. 2006-07 could have been taken unless the AO had reason to believe that income

chargeable to tax had escaped the assessment for a reason of failure on the part of assessee to disclose fully and truly all material facts necessary for assessment.

11. From the material available on record it is evident that during the course of original assessment proceedings, on the issue of allowability of Rs. 19,22,905/-, the assessee had disclosed the information to the AO and thus it would appear that assessee had disclosed the primary facts at its disposal to the Assessing Officer for the purpose of assessment. In such circumstances, it cannot be said that assessee did not disclose fully and truly all material facts necessary for the assessment. Consequently, the AO could not have arrived at the satisfaction that he had reasons to believe that income chargeable to tax had escaped assessment. In the absence of the same, the AO could not have assumed jurisdiction and issued the impugned notice under section 148 of the Act. Further, even on the reading of the reasons recorded, it cannot be said that it suggests about any failure on the part of the assessee to disclose truly and fully all material facts necessary for assessment. A claim which has been allowed in the original assessment proceedings after examination of the relevant details and facts cannot be amenable to provisions of Section 147/148 of the Act.

12. Considering the totality of the aforesaid facts, we are of the view that in the present case, notice for re-opening of the

assessment u/s 147 of the Act is not as per the mandate of Sec.147 of the Act and therefore the re-opening is not permissible. We are therefore of the view that the notice issued for re-opening has to be set aside and the same deserves to be quashed. We therefore quash the impugned re-assessment proceedings for A.Y. 2006-07 and thus set aside the same. Since we have hereinabove set aside the assessment framed u/s 143(3) r.w.s 147 of the Act. the issue on merits have been rendered academic and requires no adjudication. **Thus, the ground No.1 of the assessee is allowed.**

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

Order pronounced in the open court on 23.11.2020

**Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

SH

Date:- 23.11.2020

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI