

**IN THE INCOME TAX APPELLATE TRIBUNAL “C”, BENCH KOLKATA
BEFORE SHRI A. T. VARKEY, JM & DR. A.L. SAINI, AM**

ITA No.1985/Kol/2018
(Assessment Year: 2009-10)

Price Waterhouse & Co, Kolkata (now versus known as Price Waterhouse & Co Chartered Accountants LLP)	Vs.	DCIT, Circle-22, Kolkata
Block-EP, Plot-Y-14, Salt Lake City, Sector-V, Kolkata – 700091.		
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAHFP0187A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Appellant by : Shri C.S Agarwal, Sr. Adv., K.M. Gupta, Adv. & Bikash Kumar Jain, CA

Respondent by : Dr. P. K. Srihari, CIT(DR)

सुनवाई की तारीख / **Date of Hearing** : **19/11/2019**

घोषणा की तारीख/**Date of Pronouncement** : **05/02/2020**

आदेश / O R D E R

Per Dr. A. L. Saini, AM:

The captioned appeal filed by the assessee, pertaining to Assessment Year 2009-10, is directed against the order passed by Id. Commissioner of Income Tax (Appeals)-6, Kolkata dated 17.07.2018 which in turn arises out of an assessment order passed by Assessing Officer u/s 147/143(3) of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’) dated 26.02.2015.

2. The grounds of appeal raised by the assessee are as follows:

“Based on the facts and circumstances of the case, the Assessee respectfully craves leave to prefer an appeal on the following grounds:

1(a). On the facts and in the circumstances of the case, Ld. Commissioner of Income-tax (Appeals) ['Ld. CIT(Appeals)'] erred in confirming the action of the Ld. Assessing Officer ['Ld. AO'] in reopening the assessment under section 148 of the Act and hence the impugned reassessment is bad in law, void-ab-initio and liable to be quashed.

1(b). On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) failed to appreciate that the Ld. A.O failed to record valid reasons in the eyes of law which were modified and altered by him while disposing the objection of the Assessee, and hence the impugned reassessment proceeding is bad in law and deserves to be quashed.

1(c). On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) failed to appreciate that the reasons recorded were merely in the nature of 'reason to suspect' and not 'reason to believe' as the reassessment so framed is contrary to the reasons recorded for alleged escapement of income.

1(d). On the facts and in the circumstances of the case and in law, the Ld. CIT (Appeals) erred in holding that the impugned reassessment order passed by the Ld. AO is correct in law, without taking cognizance of the fact that the impugned reassessment order was passed with variation, modification, alteration of the recorded reasons which is impermissible under the law.

2. On the facts and in the circumstances of the case, the Ld. CIT (Appeals) erred in confirming the addition of Rs. 31,12,50,000 treating the non-refundable grant received by the Assessee from PricewaterhouseCoopers Services BV, Netherlands ('Services BV') as revenue receipt taxable under section 28(iv) of the Income-tax Act, 1961.

3. On the facts and in law and in the circumstances of the case, upon giving effect to the grounds hereinabove, the Ld. AO be directed to consequentially compute interest under section 234B, 234D and 244A of the Income-tax Act, 1961 as per the relevant provisions of the Act.

The Assessee submits that the above grounds are independent and without prejudice to one another.

The Assessee desires leave to add to or alter, by deletion, substitution or otherwise, any or all of the above grounds of objections, at any time before or during the hearing of the Appeal."

3. The facts of the case which can be stated quite shortly are as follows: The assessee filed its return of income on 30.09.2009. The Return of Income of the assessee was processed U/s. 143(1) of the I.T. Act, 1961, on 10.03.2011 at the total income of Rs. Nil. Subsequently the case was reopened U/s.148 of the I.T. Act, 1961 on 14.06.2013. The reason so recorded by AO are as follows:

"On a perusal of return of income for A.Y. 2009-10, it revealed that assessee has declared gross receipt of profession at Rs.10,60,834/- in the profit and loss accounts. Though the gross receipt of assessee is more than Rs.10,00,000/- assessee has reported in the return of income that he is not liable for audit under section 44AB of the Income tax Act. That means the amount of Rs.10,60,834/- shown as professional receipt is not assessable under the head business or profession, it is assessable as income from other sources.

Against this receipt of Rs.10,60,834/- the assessee has claimed a sum of Rs.1,06,96,210/- being other provisions (column no. 39 of the profit and loss accounts of the return of income), debited in the profit and loss accounts. As such the assessee has determined total loss from business or profession at Rs.96,35,376/- for the current year. However, the provisions are contingent in nature and hence not allowable as it is not allowable as it is not crystallized liability. Moreover, provisions have been claimed against income which is assessable as income from other sources. The assessee's claim is not allowable against income from business or profession and also against income from other sources.

In the balance sheet the assessee has shown under the head "Reserve and Surplus" a capital reserve of Rs.31,12,50,000/-. From verification of return for A.Y. 2008-09 it revealed that no such reserve has been transferred from earlier year. So it is crystal clear that the said capital reserve is undisclosed income of assessee introduced as capital. The above amount is income of the assessee from undisclosed source."

The assessee vide letter dated 24.07.2013 intimated that he filed Revised Return on 24.07.2013 to be the Return filed U/s. 148 of the I.T. Act, 1961. The reason so recorded u/s.147 was sent to the assessee and objection, if any, for the reason so recorded and reopened u/s.147, was also sent to the assessee vide letter dated 14.02.2014.

4. In compliance to the notice u/s.147 and the reason so recorded for re-opened u/s.147 of the Act, the assessee had filed objection against the proceedings u/s.147 of Income Tax Act, 1961. Which is reproduced below:

"1) Income for INR 10,60,834/-

In this connection it is submitted as under:-

a) It is submitted that the allegation made by your kindself that the receipt of INR 10,60,834/- is assessable under the head 'income from other sources' cannot be factually or legally sustained. A copy of the audited accounts of the Firm is enclosed in Annexure-1, wherefrom your kindself will note that the above amount of INR 10,60,834/- is arrived at as under –

	INR
<i>Fees billed to client</i>	<i>9,50,000</i>
<i>Interest received</i>	<i>1,10,834</i>
<i>Total</i>	<i>10,60,834</i>

b) During the year the Firm has rendered professional services to its various clients and have raised bills for fees on them for the services rendered. Client-wise detail of fees billed during the year is enclosed in Annexure-III. Accordingly, the income of INR

9,50,000/- billed by the Firm to its clients towards rendering of professional services is taxable under the head 'Profits & gains of business or profession'. The firm submits that it is not necessary that the Firm has to carry out its professional activities through its employees only. It is submitted that the Firm has carried out its professional activities through its Partners and accordingly, the fees earned by the Firm during the year under consideration is in the nature of professional income and should be assessed under the head 'Profits & gains of business or profession'.

c) We would invite attention of your kindself to section 44AB of the Act applicable for the year under consideration which reads as under (relevant portion) –

"Audit of accounts of certain person carrying on business or profession

44AB. Every person-

(a).....

(b) carrying on profession shall, if his gross receipts in profession exceed [fifty] lakh rupees in any previous year; or

get his accounts of such previous year audited by an accountant....."

On perusal of the aforesaid provision of the Act, your kindself will note that in case of an assessee carrying on profession, is required to get his accounts audited in terms of section 44AB of the Act if his gross receipts in profession exceeds ten lakh rupees in any previous year.

In the present case, your kindself will note that the Firm which is carrying on profession, had gross receipts in profession of INR 9,50,000/- as stated above which is less than the threshold of Rupees ten lakhs for application of section 44AB of the Act for the year under consideration. Your kindself will therefore appreciate that the provisions of section 44AB of the Act would not apply to the Firm for the year under consideration.

d) During the year, the Firm has made deposits in its ordinary course of business as a measure of good cash management and has earned interest therefrom aggregating to INR 1,10,834 as noted above. Your kindself will note that if such interest income is considered assessable under the head 'income from other sources', there would not be any change in the net result of computation of total income for the year since, as per the provisions of section 71 of the Act, the entire interest received of INR 1,10,834/- would be fully set off against the loss for the year computed under the head 'profits and gains of business or profession'.

2. Capital Reserve of INR 31,12,50,000/-

In this connection your kindself will note as under-

a) The assessee Firm is a member firm of the Pricewaterhouse Coopers global network of firms ("PwC network"). At the request of the Firm, Price waterhouse Coopers Services a company organized under the laws of the Netherlands, having its principal place of business at Fascinatio Boulevard 350, 3065 WB Rotherdam, The Netherlands ("PwC network") provided a non-refundable grant to the Firm of INR 31,12,50,000/- during the financial year 2008-09 for the purpose of maintaining and enhancing the resources and capabilities of the Firm as referred in the Grant Agreement dated 18th

July, 2008. The said grant amount was received by the Firm from PwC Services BV through normal banking channels.

Copies of the bank remittance advice received from bank alongwith copy of the Grant Agreement dated 18th July, 2008 entered between the Firm and PwC Services BV are enclosed collectively in Annexure-IV.

b) In view of the above, your kindself will appreciate that the subject amount cannot be assessed as income in the hands of the firm. We may also mention that the subject amount cannot be treated as undisclosed income as the firm has credited the amount in its capital reserve and has also provided such information to your kindself by letter dated 24th July, 2013 (copy enclosed in Annexure V) filed with your kindself well before receiving of the reasons recorded for issuing impugned notice u/s.147 of the Act (received on 20th February, 2014). Moreover, the nature and source of the impugned amount have been duly explained to your kindself as above.

3. Expenditure of INR 1,06.96,210/-

In this connection, it is submitted before your kindself as under –

a) Your kindself will note from the audited accounts of the Firm (enclosed in Annexure I) that the subject amount of INR 1,06,96,210/- comprises of the following expenditures-

	INR
Bank charges	110
Legal Expenses	52,87,700
External Consultants Professional Fees	54,07,850
Printing & Stationary	500
Total	1,06,96,210

It is submitted that all the above expenses have been incurred by the Firm wholly and exclusively for the purpose of its business or profession and is accordingly allowable as deduction while computing the total income of the Firm.

Your kindself will note that while the expenditure on bank charges and printing & stationery are routine expenditure, the expenditure debited under the account-head 'legal expenses' have been incurred by the Firm for the purpose of representation inter alia before the ICAI, New Delhi in the matter of audit carried out by the Firm of erstwhile Global Trust Bank for the financial year 2002-03. The expenses debited under the account head External Consultants Professional fees have been incurred for drafting and amending legal agreements including non-compete agreements etc. which has also been pointed out in our letter dated 24th July, 2013 filed with your kindself. Thus, from the enclosed details, your kindself will appreciate that none of the expenditure aggregating to INR 1,06,96,210/- are in the nature of provision as alleged.

With regard to the observation made by your kindself that the amount of INR 1,06,96,210/- is not incurred for earning of the purported other receipt of INR 10,60,834/- hence the said expenditure is not allowable as deduction, it is submitted before your kindself that it is a settled position in law that it does not require a presence of a receipt on the credit side to justify deduction of an expenses."

5.The Id Assessing officer has considered the above objections raised by the assessee and having examined the objections of the assessee, held that the contention of the assessee's objection were not tenable in view of the followings reasons, which are mentioned below, item-wise:

(i)Income of Rs.10,60,834/-

You have been stated that the firm has rendered professional services to its client and has earned Rs.9,50,000/- as professional receipts. You have further claimed that the service has been provided through its partners and accordingly the receipt is professional income. You have stated that even if interest of Rs.1,10,834/- earned from the deposits in ordinary course of business, is considered as income from other sources, it makes no difference to total income as it will be fully set off against current losses.

I have carefully considered your submission. Your contentions are not tenable. Being a chartered accountant firm does not mean that all receipt should be considered as business or professional receipts. As far as interest of Rs.1,10,834/- is considered it is assessable under the head "income from other sources" only as it is not a direct outcome of the any professional activity. Further there is no apparent nexus between your profession activity and earning of interest. In fact, there was no professional activity of any sort is clearly demonstrated by the facts that there was, absolutely no establishment expenses incurred, necessary for running of any business or profession. your argument that firm has carried out its professional activity through its Partners is preposterous as not a single rupee has been incurred for earning of Rs.9,50,000/-.

(ii).Expenditure of Rs.1,06,96,210/-

In the aforesaid letter you have disclosed that the sum of Rs.1,06,96,210/- was incurred relation to the proceedings before the disciplinary authorities for the matter pertaining to GTB for the A.Y.2003-04. From your statement it is crystal clear that the expenditure of Rs.1,06,96,210/- is nothing to do with the current years profession and further it may have incurred for culpable negligence, professional misconduct and unethical practices adopted by the firm for the violation of the Laws & Rules under which the profession of assessee firm is governed. Accordingly, prima facie the same was not allowable expenses against the current years income. Even otherwise also the same was not allowable under explanation to section 37 of the Income tax Act.

(iii).Capital reserve of Rs.31.13 Crs.

You have disclosed that a foreign company and PWC networking firm Price waterhouse Coopers services BV, Netherlands has given you a sum of Rs.31.13 Crs for the purpose of maintaining and enhancing the resources and capabilities of the firm. From the copy of agreement between you and PWC BV, filed along with the aforesaid letter, it revealed that this was given as non refundable, for acquisition of a firm M/s. Dalal and Shah. On this basis you simply stated that the non refundable amount was not taxable as income.

I have carefully considered your objections raised in this regards. Your contentions are rejected out rightly. In view of the provisions of section 4 and 5 of the Income tax Act, the aforesaid amount was fully taxable being casual and non recurring receipt. In the case of Delhi Stock Exchange Association Ltd. Vs. CIT (41 ITR 495) the Hon'ble Supreme Court has held that "it is not how an assessee treats any money received but what is the nature of the receipt which is decisive of its being taxable". The nature of non refundable amount of Rs.31.13 Crs being casual and non recurring the same was taxable and prima facie the same is assessable under the head "income from other sources". In case of CIT Vs Mogul Lines Ltd. (46 ITR 590) the Hon'ble Bombay High Court has held that the matter of taxability cannot be decided on the basis of entries which the assessee may choose to make in his account but has to be decided in accordance with the provision of the Law. Hence there cannot be a dispute that whether the said sum of Rs.31.13 Crs is taxable or not as it is fully taxable under the provisions of Income tax Act. There may be dispute about its taxability under section 28 of the Income tax Act or section 56 of the Income tax Act which can be decided after making enquiry. The Hon'ble Rajasthan High Court in the case of Eklingii Trust Vs CIT (158 ITR 810) has held that the name given to a transaction by the parties concerned does not necessarily decide the nature of transaction. In such situation the question always is what is the real character of the payment not what the parties call it. On the facts and circumstances the real character of the payment was not refundable casual receipt from group company with which the firm has no business transactions, and was fully taxable.

I would like to add here that the agreement between you and PWC BV is doubtful as it is not understood as to why the said company would give you such a substantial amount non-refundable and that to when you have no business transaction with that company. The agreement was made effective on 18.07.2008 and the same date money was transferred to your account though the agreement was signed by you on 23.10.2008 and on 07.10.2008 by other party. What was the amount of interest, if any, earned on this sum of amount has never been disclosed. Further the entire amount has been given as loan to some of the partners of the firm though the scrutiny of their bank statement revealed no such amount transferred in their accounts.

In view of the aforesaid there is no merit in your objections. Considering the reason recorded by the AO u/s. 147 of the I.T. Act, the objections raised by you are not acceptable. Hence the objection raised by you against the reopening of the assessment is hereby rejected."

6. Since the assessing officer rejected the objection raised by assessee for reopening assessment u/s 147 of the Act. Therefore, aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the CIT(A) who has confirmed the action of the assessing officer. Aggrieved, the assessee is in appeal before us.

7. We heard both the parties and carefully gone through the submission put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the fact of the case including the findings of the Id CIT(A) and other materials brought on record. Before us, Id Counsel reiterated the submissions made before the Id CIT(A). On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity. We note that the assessee, firm of Chartered Accountants, filed a return of income on 30.09.2009. The assessee firm has come into existence on 01.04.1996. However, there had been changes in the constitution of the firm from time to time both in respect of partners as well as in their sharing ratio in the profit and loss. Income declared for the AY 2009-10, as per the return of income aggregated to Rs. (-) 96,35,376/-. No assessment has been framed u/s 143(3) of the Act, only intimation u/s 143(1) was issued by the Department. A notice u/s 148 of the Act had been issued on 14.06.2013. Return of income filed pursuant to notice issued u/s 148 of the Act on 24.07.2013. A copy of the letter supplying reasons to believe on 14.02.2014 (i.e. note of satisfaction recorded by the AO) provided to assessee. Assessee's objections filed before AO dated 24.03.2014 supported by the following documents/evidences

- i) Copy of audited accounts of the firm.
- ii) Copy of partnership deeds-
 - a) Dated 01.07.2008. The firm carried its profession during the FY 2008-09 under this deed of partnership.

- b) 2nd Supplemental partnership deed dated 01.04.2007, to the deed of partnership dated 1.04.2004. The deed dated 01.04.2007 is stated to be 2nd Supplemental deed, since there was the 1st supplemental deed to the deed of partnership dated 01.10.2004.
- c) Supplementary deed dated 24.06.2010 (w.e.f. 01.08.2008)
- d) Bank remittance Advice received from Bank along with a Grant Agreement dated 18.07.2008, executed between PricewaterhouseCoopers Services BV, Netherlands and the Firm.

Thereafter, AO framed an assessment u/s 143(3)/147 of the Act on 26.02.2015 determining income of Rs. 31,23,10,220/-, inter-alia making the following two additions/disallowances:

- (i) Disallowance of Rs. 1,06,95,600/-, debited under the head 'legal expenses'.
- (ii) An addition of Rs. 31,12,50,000/- reflected in the Balance sheet under the head "capital reserve". The said sum represented a "non-refundable grant" received by the firm from PricewaterhouseCoopers Services BV, Netherlands for the purposes of maintaining and enhancing the resources and capabilities of the firm, as stated in Grant Agreement dated 18.07.2008.

On appeal, the learned CIT(Appeals) upheld the validity of initiation of proceeding under section 147 of the Act and also upheld the addition of Rs. 31,12,50,000/- received by the Assessee as non-refundable grant under section 28(iv) of the Act. However, he deleted the disallowance (subject to directions to AO to verify TDS) of Rs. 1,06,95,600/-. Subsequently, the AO vide order dated 5 September 2018 has given relief of Rs. 1,06,95,600 after verifying that TDS was duly deducted by the Assessee.

8. First of all, let us examine the findings of the 1st CIT(A) in respect of validity of reopening the assessment under section 147 of the Act, which are given below for ready reference:

“I have perused the detailed technical and legal submissions made by the assessee based on various judicial pronouncements in this regard. However, before dealing with the various aspects submitted by the assessee, it is relevant to add that in case where assessment is not completed u/s 143(3) of the Act, it is merely a case of return being processed u/s 143(1)(a) of the Act. Hence, such judicial pronouncements relied upon by the assessee have no bearing on the facts of the present case. Reliance in this regard, is placed on the decision of Hon'ble Delhi High Court in the case of Indu Lata Rangwala vs. DCIT [W.P. (C) 1393/2002], wherein it was held as under:

35.1 The upshot of the above discussion is that where the return initially filed is processed under section 143(1) of the Act, and an intimation is sent to an Assessee, it is not an 'assessment' in the strict sense of the term for the purposes of Section 147 of the Act. In other words, in such event, there is no occasion for the AO to form an opinion after examining the documents enclosed with the return whether in the form of balance sheet, audited accounts, tax audit report etc.”

From the above decision, it is clear that the contention of the assessee that initiation of reassessment is invalid, is liable to be rejected as there is no opinion formed earlier, by the AO, with respect to the issues recorded in the reasons of reopening the case. Even the objections raised by the assessee were not denied, that there is escapement of income. On the contrary, it has only made certain legal averments, which has been duly examined by the AO in the reassessment order.

In view of the above, I am of the opinion that issuance of notice u/s 148 of the Act, by the AO is correct in law, and which has been completed strictly in accordance with the decision rendered in the case of GKN Driveshaft(supra). Accordingly, the first and second ground of the assessee are dismissed.”

We note that Id CIT(A) dismissed the grounds raised by the assessee in respect of validity of reopening u/s 147 of the Act stating that assessee's assessment was not completed u/s 143(3) of the Act, it is merely a case of return being processed u/s 143(1)(a) of the Act. Where the return initially filed is processed under section 143(1) of the Act, and an intimation is sent to an Assessee, it is not an 'assessment' in the strict sense of the term for the purposes of Section 147 of the Act. In other words, in such event, there is no occasion for the AO to form an opinion after examining the documents enclosed with the return whether in the form of balance sheet, audited accounts, tax audit report etc. Now we shall examine issue-wise, to understand whether assessing officer has rightly exercised his jurisdiction u/s 147 of the Act:

(i)Income of Rs.10,60,834/-. The AO was of the view that the receipt of INR 10,60,834/- is assessable under the head 'income from other sources', which was

factually incorrect as the assessee has submitted break up of Rs. 10,60,834/- in his return of income which is given below:

	INR
Fees billed to client	9,50,000
Interest received	1,10,834
Total	10,60,834

During the year the Firm has rendered professional services to its various clients and have raised bills for fees on them for the services rendered. Client-wise detail of fees billed during the year was submitted by assessee before AO. Accordingly, the income of INR 9,50,000/- billed by the Firm to its clients towards rendering of professional services is taxable under the head ' Profits & gains of business or profession'. Another grievance of the AO was that assessee did not get his accounts audited under section 44AB of the Act. We note that in case of an assessee carrying on profession, (for A.Y. 2009-10), is required to get his accounts audited in terms of section 44AB of the Act if his gross receipts in profession exceeds ten lakh rupees in any previous year. In the assessee`s case under consideration the gross receipts are Rs. 9,50,000/-, therefore assessee is not required to get his accounts audited u/s 44AB of the Act. Interest income of Rs. 1,10,834/- does not fall under the head “income from business or profession” therefore it does not come under the ambit of tax audit. The Assessee which is carrying on profession, had gross receipts in profession of INR 9,50,000/- only, as stated above which is less than the threshold of Rupees ten lakhs for application of section 44AB of the Act for the year under consideration. Therefore, tax audit provisions are not applicable to the assessee.

Therefore, so far this issue/ item is concerned there is no tangible material before the AO to frame ‘reason to believe’ that income has escaped assessment, hence reassessment proceedings are not valid.

(ii).Expenditure of Rs.1,06,96,210/-: The assessee submitted the particulars of these expenses as follows:

	INR
Bank charges	110
Legal Expenses	52,87,700
External Consultants Professional Fees	54,07,850
Printing & Stationary	500
Total	1,06,96,210

It is submitted that all the above expenses have been incurred by the Firm wholly and exclusively for the purpose of its business or profession and is accordingly allowable as deduction while computing the total income of the Firm. The expenditure on bank charges and printing & stationery are routine expenditure, the expenditure debited under the account-head 'legal expenses' have been incurred by the Firm for the purpose of representation inter alia before the ICAI, New Delhi in the matter of audit carried out by the Firm of erstwhile Global Trust Bank for the financial year 2002-03. The expenses debited under the account head External Consultants Professional fees have been incurred for drafting and amending legal agreements including non-compete agreements etc. AO was of the view that assessee made provisions of Rs.1,06,96,210/-. We note that none of the expenditure aggregating to INR 1,06,96,210/- are in the nature of provision as alleged. These expenses have been disclosed in the return of income filed by the assessee u/s 139 of the Act therefore it is not a new tangible material to reopen the assessment u/s 147 of the Act.

(iii).Capital reserve of Rs. 31,12,50,000/-: The assessee Firm is a member firm of the Price waterhouse Coopers global network of firms ("PwC network"). At the request of the Firm, Price waterhouse Coopers Services a company organized under the laws of the Netherlands, having its principal place of business at Fascinatio Boulevard 350, 3065 WB Rotherdam, The Netherlands ("PwC network") provided a non-refundable grant to the Firm of INR 31,12,50,000/- during the financial year 2008-09 for the purpose of maintaining and enhancing the resources and capabilities of the Firm as referred in the Grant Agreement dated 18th July, 2008. The said grant amount was received by the Firm from PwC Services BV through normal banking channels. Copies of the bank remittance

advice received from bank along with copy of the Grant Agreement dated 18th July, 2008 entered between the Firm and PwC Services BV were submitted by the assessee. The said grant is mentioned in the return of income filed by the assessee u/s 139 of the Act therefore it is not a new tangible material to reopen the assessment u/s 147 of the Act.

9. We note that the issues/items for which AO has reasons to believe that income has escaped assessment, had already been disclosed by the assessee in the return of income filed by the assessee u/s 139 of the Act therefore these issues noted above in para 8 of our order are not tangible material to reopen the assessment u/s 147 of the Act. We note that in assessee's case no assessment was carried out by AO u/s 143(3) of the Act and only intimation has been issued under section 143(1) of the Act. However, we note that assessing officer has every power to issue notice under section 143(2) of the Act to do the scrutiny assessment u/s 143(3) of the Act, which he has failed to do so in the assessee's case and for that assessee should not be penalized. The assessee has disclosed every item/issue in the return of income filed by the assessee u/s 139 of the Act, and AO failed to point out any new tangible material to reopen the assessment u/s 147 of the Act.

We note that Hon'ble Supreme Court in CIT vs. Kelvinator of India Ltd. (reported in 320 ITR 561 (SC)) wherein it was held as follows:

“The power to reopen under the amended section 147 is much wider, one needs to give a schematic interpretation to the words “reason to believe” failing which section 147 would give arbitrary powers to the AO to re-open assessments on the basis of “mere change of opinion”, which cannot be per se reason to re-open. One must also keep in mind the conceptual difference between power to review and power to re-assess. The AO has no power to review; he has the power to re-assess. But re-assessment has to be based on fulfilment of certain pre-condition and if the concept of “change of opinion” is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of “change of opinion” as an in-built test to check abuse of power by the AO. Hence, after 1.4.1989, the AO has power to re-open, provided there is “tangible material” to come to the conclusion that there is escapement of income from assessment.”

Therefore, as noted above the assessee has disclosed every item/issue in the return of income filed by it u/s 139 of the Act, and AO failed to point out any new tangible material to reopen the assessment u/s 147 of the Act. Therefore, the reassessment proceedings in the assessee's case is not valid.

10. We note that in the instant case, reassessment was initiated by the ld. A.O on account of the following reasons:

(a) Professional receipt of 10,60,834/- is not assessable under the head profits and gains from business or profession, but under 'Income from other sources'; and tax audited report did not get by assessee.

(b) Expenditure of Rs. 1,06,96,210/- (Pertaining to Legal expenses and External Consultants Fees) is contingent in nature and hence not allowable and as such a revenue of Rs. 10,69,210 is chargeable to tax as escaped income.

(c) Capital Reserve of Rs. 31,12,50,000/- is undisclosed income and assessable as income from other sources.

On perusal of the recorded reasons, it is pertinent to note that the information pertaining to the above points were already available with the Ld. AO. relevant extracts of the reasons recorded by the Ld. AO in initiating the reassessment proceedings, demonstrating the said fact, has been reproduced below:

"On a perusal of return of income for A.Y.2009-10, it revealed that assessee has declared gross receipt of profession at Rs.10,60,834/- in the profit and loss accounts...."

"....Against this receipt of Rs. 10,60,834/- which is assessable as income from other sources, assessee has claimed a sum of Rs. 1,06,96,210/- being other provisions (column no.39 of the profit and loss accounts of the return of income), debited in the profit and loss accounts."

"In the balance sheet the assessee has shown under the head "Reserve and Surplus" a capital reserve of Rs. 31,12,50,000/-. From verification of return for A.Y.2008-09 it revealed that no such reserve has been transferred from earlier year...."

The Id Counsel submitted before us that AO could not have invoked the provisions of section 147 of the Act, since no fresh tangible material had surfaced, a condition precedent to invoke the provisions of section 147 of the Act. Reassessment proceedings had been initiated merely to scrutinize the return of income which is impermissible. Provisions of section 147 of the Act cannot be resorted to, to verify or to make further enquiry, as held by the Hon`ble Supreme Court in the case of Chhugamal Rajpal vs. S. P. Chaliha and Ors., 79 ITR 603 (SC). The assessee filed Return of Income u/s 139(1) of the Act, wherein the assessee has disclosed each item/issue and there is no tangible material before the AO to reopen assessment. In the absence of surfacing of any fresh tangible material, initiation of proceedings u/s 147 of the Act is without jurisdiction as held by Hon`ble Supreme Court in the case of ACIT vs. ICICI Securities Primary Dealership Ltd., 348 ITR 299 (SC).

Where no assessment had been made u/s 143(3), it cannot be concluded that the income has escaped assessment, for that Id Counsel relied on the judgment of the Hon`ble Delhi High Court in the case of Ved & Co., 302 ITR 328, wherein it was held as follows:

"2. The assessee had filed its return of income on 29th Sept., 1994 declaring an income of Rs. 17,88,830.

Without processing the return, the AO on 5th June, 1996 recorded reasons for issuing a notice to the assessee for reassessment on the ground that the assessee has wrongly claimed excessive deduction under s. 80-O of the IT Act, 1961 and that income has escaped assessment.

Thereafter, on 11th June, 1996 the return of income was processed by the AO under s. 143(1)(a) of the Act and on the same date notice was issued to the assessee under s. 148 of the Act requiring it to file its return of income.

3. In CIT vs. Kelvinator of India Ltd. (2002) 174 CTR (Del)(FB) 617 : (2002) 256 ITR 1 (Del)(FB), a Full Bench of this Court observed that an order of assessment can be passed either in terms of sub-s. (1) of s. 143 or sub-s. (3) of s. 143 of the Act. Insofar as the present case is concerned, it is an admitted position that no assessment order was passed under s. 143(3) of the Act and that the return of the assessee was processed under s. 143(1) of the Act only on 11th June, 1996.

4. In Trustees of H.E.H. the Nizam's Supplemental Family Trust vs. CIT (2000) 159 CTR (SC) 114 : (2000) 242 ITR 381 (SC), the Supreme Court observed :

"It is settled law that unless the return of income already filed is disposed of, notice for reassessment under s. 148 of the IT Act, 1961, cannot be issued, i.e. no reassessment proceedings can be initiated so long as assessment proceedings pending on the basis of return already filed are not terminated."

5. From the dates that we have mentioned above and the law as laid down, it is clear that assessment proceedings terminated under s. 143(1) of the Act only on 11th June, 1996. In other words, on 5th June, 1996, when the AO made up his mind to issue a notice to the assessee under s. 147/148 of the Act, a valid return of income filed by the assessee was still pending before him and which could have been processed.

6. It is submitted by learned counsel for the Revenue that since the period for issuing a notice to the assessee under s. 143(2) of the Act had already elapsed, and the AO was of the view that income had escaped assessment, the AO had no option but to resort to cl. (b) of Explan. 2 to s. 147 of the Act for initiating reassessment proceedings. This clause reads as follows :

"Sec. 147 xxxxx

Explanation 1 : xxxxx

Explanation 2 : For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :

(a) xxxx

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the AO that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(c) xxxxx"

7. The submission made by learned counsel for the Revenue is that a return of income was furnished by the assessee and before any assessment was framed, it was noticed by the AO that the assessee had understated its income and claimed excessive deduction in the return and, therefore, action could be taken under ss. 147 and 148 of the Act. Consequently, the conclusion arrived at by the Tribunal was incorrect.

8. We are of the opinion that in view of the decisions that we have mentioned above, for the purposes of initiating reassessment proceedings, the AO could not have made up his mind that the income of the assessee has escaped assessment while a valid return was still pending before him. If the AO had allowed the time to elapse for taking action under s. 143(2) of the Act, it was entirely his own doing. What the AO is now trying to do in an indirect (and incorrect) manner is what he could not have done directly.

9. The further contention raised on behalf of the Revenue is that even if no assessment order was framed, the AO could issue a notice for reassessment. We are of the view that if no assessment had been made, there was no occasion for the AO to conclude that income had already escaped assessment.

10. This being the position, we are of the opinion that no substantial question of law arises for our consideration and we do not find any error in the view that has been taken by the Tribunal in this regard.

11. Consequently, the appeal is dismissed."

11. Therefore, in the light of the aforesaid judicial precedents and other case laws, we note that to initiate reopening of the assessment, the Ld. AO must have 'reason to

believe' that income chargeable to tax has escaped assessment. Such reason to believe must be based on some material coming to the possession of the Ld. Assessing Officer which may trigger reason to suspect. It must be kept in mind that the "reason to believe" must have a rational connection with or relevant bearing on the formation of the belief, i.e, there must be the direct nexus or link between the material and the formation of such belief. Since in the instant case, the issues/items for which the Assessing Officer has reopened the assessment had already been disclosed by the assessee in the return of income filed by him u/s 139(1) of the Act. The Assessing Officer having not carried out the scrutiny assessment within the prescribed statutory limit, cannot be given another innings for no fault of the assessee and therefore in the facts and circumstances of the case, we are of the considered opinion that 'reason to believe' which is the jurisdictional precondition to reopen the assessment as required by the law has not been met in the reasons recorded in the instant case and therefore the action of the Assessing Officer to reopen the assessment is null in the eyes of law and hence we are inclined to quash the initiation of reassessment proceedings being ab-initio void.

12. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on this 05/02/2020.

Sd/-
(A. T. VARKEY)

न्यायिक सदस्य / JUDICIAL MEMBER

कोलकाता /Kolkata;

Dated:05./02/2020

RS, Sr.PS

Sd/-
(A. L. Saini)

लेखा सदस्य / ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Assessee- Price Waterhouse & Co, Kolkata (now versus known as Price Waterhouse & Co Chartered Accountants LLP)
2. प्रत्यर्थी / The Respondent.- DCIT, Circle-22, Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A),

4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

//True Copy//

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.