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(SETUP BY AN ACT OF PARLIAMENT)

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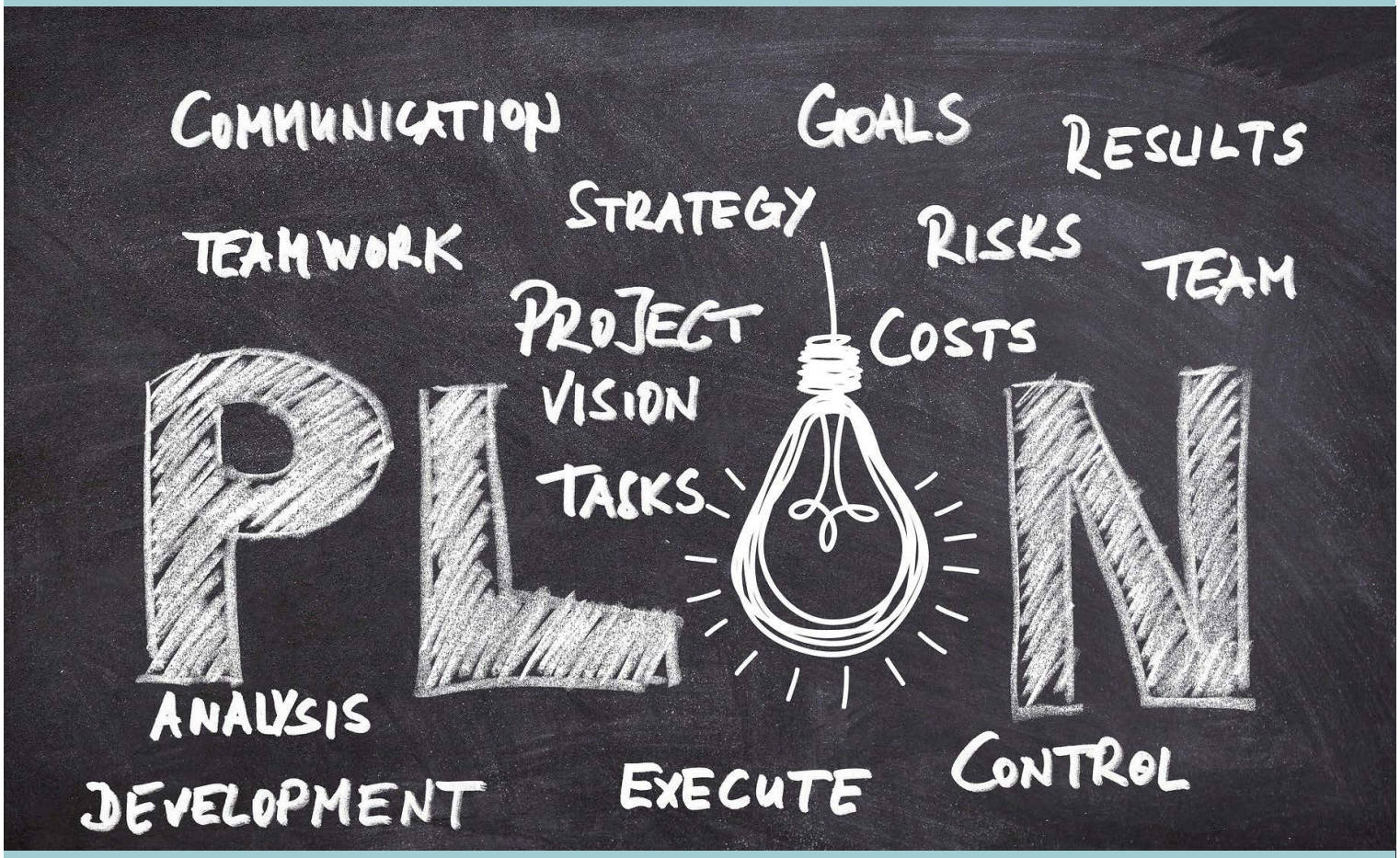

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Chairman's Message

Dear Professional Colleague,

I wish to start my communique by placing on record my deepest gratefulness for your extraordinary support.

The Managing committee are completing 9 months of the term 2021-22. Looking back, across the nine months of our activities, we can proudly say that we have surpassed all the challenges put forward by the pandemic, exploring new ways and assimilating new norms . I wish to place on record my deepest gratefulness for your extraordinary support, guidance and blessings as we complete 9 months of the term 2021-22. The journey so far has truly been a boundless learning and most importantly a really satisfying one. I hope and pray that I meet your expectations or at least reach half the benchmark set by my honorable forerunners. I humbly request for your continued support, feedback and guidance so as to work better for our fraternity. It's that time of the year where excitement is at its peak.

ICAI's Financial and Tax Literacy Drive The knowledge and understanding of basic and functional concepts of finance, budgeting and investment can fundamentally impact subsequent financial decisions taken by an individual or an entity. Given the great importance that Financial and Tax literacy carries in this day and age, the ICAI has come up with a noble initiative to educate the Indian masses on the basics of taxation, insurance, banking, and various other subject areas of finance by way of the literacy drive

The month of October is acknowledged to be auspicious across cultures, with the celebration of Navratri, followed by Dashara, as these festivals signify the victory of good over evil.

With regard to students front and the recent students entry to our profession I request Members to help the Branch identify schools and colleges where Members themselves are Alumni of, and such counseling activities may be either conducted by such Member or by the Branch. This allows for us to engage with potential students and get them to our course through the medium of career counseling.

Initially many were skeptical about the idea of a fully online seminars, but most were pleasantly surprised. Sessions did not run over time, the meeting was more inclusive as people who normally would find it difficult to travel and attend physical seminars were able to attend. Even members sitting far away in

different parts of Kerala and other States too were able to attend seminars online. We were also able to invite a much larger speaker pool because of the online reach and the related lower costs. On the other hand, the absence of face-to-face contact and an inability to catch up with old friends and colleagues diminished the experience for all of us. In future, it is proposed that we will combine both experiences physical and virtual, in a hybrid format. We had conducted more than 130 hours of CPE programs at our branch till date and which is still continuing.

The branch organized a study tour to Kashmir where more than 30 people including family of respective members participated. The study tour proved to really a refreshing experience to all where couple of days places were visited at higher altitudes too giving a variety experience including SNOWFALL. The branch also held various other seminars in the same month with topics of varied interest as well. Topics on GST, taxation, audits were handled by eminent faculties.

This month Gandhi jayanthi celebrations were held at the branch and the Branch supported the initiatives of the government as part of Swach Bharath Abhiyaan. We cleaned our branch premises and also distributed grow bags to the needy people. This month we are planning for sports activities and some central committee programs. Study circles are also planned to be held on physical mode as some relaxations are provided. Our New ITT lab is fully ready for functional and will be inaugurated in the coming months.

Apart from these activities, the month of October was very hectic with student activities, CSR activities, regular online Coaching Classes, mandatory courses etc. As exam dates are out we are planning Crash Course, Session on stress and time management, Meditation for effective Studies.

Our SIRC 53rd Regional conference "VITTHAKAM"aligned up for the Month of November 2021. Dates Being 19th and 20th. The conference is held at Coimbatore LE MERIDIAN hotel. Option for both Physical and online registration is arranged. I urge all members to kindly register and make this programme a grand success.

This is the year of election for ICAI. I urge all the members to vote in the upcoming elections and see that we follow our duty towards the Institute and towards our country. We as the members of the institute and qualified person can very well understand and wise members will take an appropriate decision.

I am not sure when life will be "normal" or what "normal" will look like. However I look forward to meeting many of you in person in the coming months when we get to physical mode of seminars and Meetings. Nothing is permanent we have to accept the changes and challenges of life and God has given us that capacity to handle the situation fearlessly and with courage.

The quote of Mahatma Gandhi is very much needed to be adopted in our life that is -" ***LIVE AS IF YOU WERE TO DIE TOMORROW, AND LEARN AS IF YOU WERE TO LIVE FOR EVER"***

FORTUNE METALIKS LTD. v. DEPUTY COMMISSIONER OF INCOME TAX

(CHAN-ITAT) 2021 ITL 50

ITAT, CHANDIGARH 'A' BENCH

Member(s) : Smt. Annapurna Gupta, A.M. & R. L. Negi, J.M.

ITA No. 1090/Chd/2019; Asst. yr. 2011-12

DATED- 12-01-2021

The Income-tax Act, 1961 - Section147

In favour of : Assessee

Sudhir Sehgal, for the Assessee :

Smt. Meenakshi Vohra, for the Revenue

ORDER

SMT. ANNAPURNA GUPTA, A.M. :

1. The present appeal has been preferred by the assessee against the order dt. 7th June, 2019 the Commissioner of Income Tax (Appeals)-5, Ludhiana, [in short referred to as CIT(A)], passed under s. 250(6) of the IT Act, 1961 (hereinafter referred to as "Act") pertaining to asst. yr. 2011-12.

2. The brief facts relating to the case are that the assessee-company is engaged in the business of manufacturing and trading of TMT Bars and other steel items. For the impugned assessment year, return of income was filed by the assessee declaring loss of Rs. 7.54 crore as per normal

provisions and income amounting to Rs. 38.43 lacs as per s. 115JB of the Act. The assessment under s. 143(3) was completed at the returned income. Thereafter, the case of the assessee-company was reopened under s. 147 of the Act and the original returned loss of Rs. 7.54 crore was reduced to Rs. 5.86 crore by adding back an income of Rs. 1.67 crore. Against the order so passed, the assessee filed appeal to the learned CIT(A) challenging the assumption of jurisdiction by the AO under s. 147 of the Act and also raising grounds on the merits of the case. The learned CIT(A) dismissed the legal ground raised by the assessee while he partly allowed the ground raised on merits.

3. Aggrieved by the same, the assessee has come in appeal before us raising both legal ground and also on merits. We shall first be dealing with the legal ground raised by the assessee since it challenges the validity of the assessment order itself. The said ground relates to ground No. 1 raised by the assessee and reads as under :

"1. That the learned CIT(A) has erred in dismissing the ground of proceedings of reopening the case under s. 148 of the IT Act, 1961.

4. The primary argument of the assessee challenging the assumption of jurisdiction by the AO under s. 147 of the Act is on the premise that the reasons recorded by the AO for assuming jurisdiction to reopen the case were bad in law, being based on incorrect facts which showed no application of mind by the AO on the information in his possession and also that the satisfaction for escapement of income was not his own but borrowed. Our attention was drawn to the reasons recorded, copy of which was placed before us on paper book page Nos. 35 to 37, as under :

Reasons for Issue of notice under s. 148 of the ACT in the case of M/s Fortune Metaliks Ltd. for the asst. yr. 2011-12.

1. The assessee is a limited company and engaged in business of rolling mills. The assessee has filed return of income through e-filling 30th Sept., 2011 for asst. yr. 2011-12 declaring income of Rs. Nil (Rs. 38,43,004 under s. 115JB. Further, return of income assessed under s. 115JB at Rs. 38,43,004 on 20th March, 2014.

2. This office is in the possession of the information received from Addl. Director of IT (Inv.), Unit-I, Central Revenue Building, Civil Lines, Raipur (C.G) on 12th March, 2018 in the case of M/s Fortune Metaliks Ltd.

3. In his report Addl. Director of IT (Inv.), Unit-I, Raipur, has made following observations :

The Commercial Tax Department, Chhattisgarh has detected and identified the concerns in whose name bogus sale bills have been issued. Such bogus sale bills were de-

tected with the help of specialized software of the Commercial Tax Department. After detection of such bogus bills, they were confirmed through enquiry and spot verification by the Commercial Tax Department. The findings on such bogus billing have been shared to the various intelligence and investigation agencies in the meeting of RE1C, Raipur on various dates. As per these findings, the beneficiaries have been taken bogus purchase bills from bogus dealers. Thus, the beneficiaries have suppressed their total income by way of debiting bogus purchases. Accordingly, action under s. 147 of the IT Act, 1961 has to be taken in case of such beneficiaries for financial year 2010-11 which is going to be time barred by limitation on 31st March, 2018. Details of such beneficiaries and corresponding bogus dealers, amount of bogus bills etc. pertaining to financial year 2010-11 are being forwarded for taking action under s. 147 of the IT Act, 1961 as the PAN and jurisdiction lies with you.

4. This office has checked the entire details of the assessee on 360 degree profile on ITBA portal like Bank details, Address of assessee, ITR's details, processing details, Tax details etc.

5. From the above information it was seen that assessee is involved in taking bogus purchase bill from bogus dealers namely as M/s Shital Trading Company for Rs. 1,31,78,094 and from M/s Raj Dealers for Rs. 35,96,520 in the asst. yr. 2011-12 and thus the assessee has suppressed its profit by way of debiting bogus purchases in the Trading and P&L a/c.

6. In view of above facts of the case, I have reason to believe that the income chargeable to tax, as discussed in para No. 05 above i.e. Rs. 1,67,74,614, has escaped assessment (and also any other income chargeable to tax which has escaped assessment and which comes to notice subsequently in the course of the proceedings under s. 147 of IT Act.

7. In this case a return of income was filed for the year under consideration and regular assessment under s. 143(3)/147 was made 20th March, 2014. Since 4 years from the end of the relevant year has expired in this case, the requirement to initiate proceeding under s. 147 of the Act are reason to believe that income for the year under consideration has escaped assessment because of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the assessment year under consideration. It is pertinent to mention here that reasons to believe that income has escaped assessment for the year under consideration have been recorded above. I have carefully considered the assessment records containing the submission made by the assessee in response to various notices issued during the assessment/reassessment proceedings and have noted that the assessee has not fully and truly disclosed the following material facts necessary for his

assessment for the year under consideration:

- It is evident from the above facts that the assessee had not truly and fully disclosed material facts necessary for his assessment for the year under consideration thereby necessitating reopening under s. 147 of the Act.

- It is true that the assessee has filed a copy of annual report and audited P&L a/c and balance sheet along with return of income where various information/material were disclosed. However, the requisite full and true disclosure of all material facts necessary for assessment has not been made as noted above. It is pertinent to mention here that even though the assessee has produced books of account, annual report, audited P&L a/c and balance' sheet or other evidence as mentioned above, the requisite material facts as noted above in the reasons for reopening were embedded in such a manner that material evidence could not be discovered by the AO and could have been discovered with due diligence, accordingly attracting provisions of Expln. 1 of s. 147 of the Act.

- It is evident from the above discussion that in this case, the issues under consideration were never examined by the AO during the coure of regular assessment/reassessment. This fact is corroborated from the contents of notices issued by the AO under s. 143(2)/142(1) and order-sheet recorded during the 143(3)/147 proceedings. It is important to highlight here that material facts relevant for the assessment on the issue(s) under consideration were not filed during the course of assessment proceedings and the same may be embeded in annual report, audited P&L a/c, balance sheet and books of account in such a manner that it would require due diligence by the AO to extract these information. For aforesaid reasons, it is not a case of change of opinion by the AO.

- In this case, more than four years have lapsed from the end of assessment year under consideration. Hence necessary sanction to issue notice under s. 148 has been obtained separately from Principal CIT as per the provisions of s. 151 of the Act."

5. Referring to the above, learned counsel for the assessee pointed out that the AO had recorded satisfaction of escapement of income on the basis of information which had come to his possession from the Commercial Tax Department, Chhatisgarh, that bogus purchase bills had been taken by the assessee from two parties. Drawing our attention to para 5 of the reasons recorded, learned counsel for the assessee contended that while noting the figures of bogus purchases, the AO had recorded wrong figures. That the actual purchases from one such alleged party M/s Sheetal Trading Company, noted by the AO at Rs. 1,31,78,094 in para 5, was Rs. 67,18,244 while that of the another M/s Raj Dealers, recorded at Rs. 35,96,520 was Rs. 73,62,946. Further, the

name of one of the parties had also been noted wrongly as M/s Raj Dealers in place of its actual name Raj Traders. He further contended that the AO had noted that the assessee had debited these amounts to P&L a/c which again was an incorrect fact since these bills related to purchase of fixed assets and had not been debited to the P&L a/c. The learned counsel for the assessee contended that the satisfaction being based on incorrect facts, it could not form the basis for reopening the case. In this regard, he placed reliance on the following decisions of the Tribunal holding that satisfaction of the AO of escapement of income based on incorrect facts would not empower the AO to reopen the case :

- Smt. Monika Rani vs. ITO ITA No. 582/Chd/2019, dt. 28th Feb., 2020
- Sagar Enterprises vs. Asstt. CIT (2002) 173 CTR (Guj) 528 : (2002) 257 ITR 335 (Guj)
- Baba Kartar Singh Dukki Educational Trust vs. ITO (2015) 171 TTJ (Chd)(UO) 25 : (2016) 158 ITD 965 (Chd)
- Van Oord Dredging & Marine Contractors BV vs. Addl. Director of IT ITA No. 495/Mum/2016
- Ram Mohan Rawat vs. ITO ITA No. 1014/Jp/2018
- Allen De Noronha vs. Asstt. CIT ITA No. 338/Lkw/2015 Lkw-Trib.
- IOT Infrastructure & Energy Services Ltd. vs. Asstt. CIT & Anr. (2010) 233 CTR (Bom) 175 : (2010) 41 DTR (Bom) 370 : (2010) 329 ITR 547 (Bom)

The learned counsel for the assessee contended that it is evident that the AO had not cared to apply his mind at all to the information before him and the satisfaction of the AO of escapement of income was without application of mind and was in fact borrowed satisfaction. He drew our attention to the following case laws purportedly holding that non-application of mind by the AO while recording reasons would render the reassessment proceedings invalid :

i. Holy Faith International (P) Ltd. vs. Dy. CIT ITA No. 181/Asr/2017 Chd-Trib.

ii. Hari Steels & General Industries Ltd. vs. Dy. CIT 104 taxmann.com 293 (Del-Trib.)

iii. Magan Behari Lai vs. Dy. CIT 75 ITR (Trib.) 322 (Del)

6. The learned Departmental Representative, on the other hand, drew our attention to the findings of the learned CIT(A) in this regard at p. 60 of the order as under :

The AO, therefore, had a cause to show that income of the appellant had escaped assessment and the AO had a bona fide reason to believe, formed on the basis of tangible material/ information on record that income of the appellant had escaped assessment within the meaning of s. 147. Credible information was received by the AO relating to the case and the AO was duty-bound to act on the same. The AO could not have slept on the information without taking any action. The credible information received could not be kept in the file without taking cognizance and the AO was rather duty-bound to act on the same. Considering the facts in this case, it is found to be a fit case where the AO has rightly initiated action under s. 147 on the basis of information received from Directorate of Income Tax (Investigation). The issue is covered by the decision of the Hon'ble Tribunal, Mumbai (ITA No. 995/Mum/2012) in the case of Ratnakar M. Pujari, Mumbai vs. ITO Ward-25(3)(3), Mumbai, where, the Hon'ble Tribunal has elaborately discussed the issues of reopening under s. 147 and consequential addition. The Hon'ble Tribunal has held that the reopening under s. 147 is justified, as the information received from the Investigation Wing is fresh and tangible material which has live link and nexus with the formation of belief that the income of the assessee has escaped assessment. In view of these facts and in the circumstances of the case, the arguments of the Authorised Representative are found devoid of merits and the issue of notice by the AO under s. 148, after recording reasons for reopening under s. 147, based upon information received, is found to be as per law?"

7. We have heard both the parties. We find merit in the contention of the learned counsel for the assessee that the reassessment proceedings undertaken by the AO in the present case were invalid since the reasons recording his satisfaction of escapement of income were based on incorrect facts and there was no application of mind at all by the AO. The fallacies in the facts pointed out by the learned counsel for the assessee regarding the quantum of bogus purchases noted by the AO in his reasons as also name of one of the parties has not been disputed or controverted by the Revenue. Further, even the fact recorded by the AO in the reasons that the bogus bills had been debited to the P&L a/c was incorrect which is evident from the fact that the learned CIT(A) in his order passed on merits has found these bills to be relating to purchase of fixed assets and has accordingly, made the disallowance of only depreciation relating to the same, which has not been challenged by the Revenue before us. It is clearly evident that on receiving information from the Commercial Tax Department, the learned AO did not even care to verify the same from his records from where all these factual inaccuracies would have been brought out. There was clearly total non-application of mind by the AO and the belief of escapement of income is definitely not his own but borrowed from that of the Commercial Tax Officer who had forwarded the information.

The basic requirement of law for reopening an assessment is application of mind by

the AO to the material or information in his possession to conclude and arrive at a satisfaction therefrom that income has escaped assessment. Both application of mind and satisfaction/belief of the AO are lacking in the present case. The reassessment therefore we hold is invalid. The case laws relied upon by the learned counsel for the assessee support the case of the assessee. The order passed by the AO is, therefore, set aside.

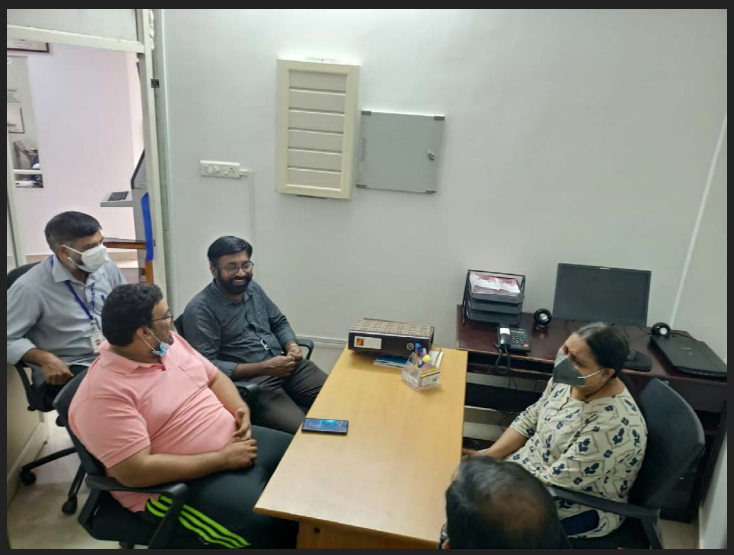
8. The ground of appeal No. 1 is, therefore, allowed.

9. Since we have set aside the order passed by the AO, we do not consider it necessary to adjudicate the grounds raised on merits, since it would be a mere academic exercise.

10. In the result, the appeal of the assessee is allowed in above terms.

Source: income tax liabrary

Activities - October, 2021



Swachh Barath Abhiyan- Gandhi Jayanthi - 02.10.2021

Kashmir Residential Programme

Workshop on Valuation & Insolvency Act & Workshop on GST & Trust - 11.10.2021 & 12.10.2021

Upcoming Programmes - November, 2021

November

13	Sports Day
19 & 20	Regional Conference of SIRC at Coimbatore
24 & 25	Two Day Workshop Under Committee on Insolvency & Bankruptcy Code of ICAI
27,29 & 30	Three Day Refresher Course Under Corporate Laws & Corporate Governance Committee of ICAI

Contributions to e-newsletter

Contributions in the form of articles, poems, jokes, travelogues etc. are invited from members for consideration in the monthly e-Newsletter. Interested members may email their contribution to *icaikoznewsletter@gmail.com* along with name, membership number and mobile number.