

(2025) 11 ITAT CK 0006

Income Tax Appellate Tribunal

Case No: Income Tax Appeal No. 5384, 5385/Del/ Of 2017, Cross Objections No.47,
48/Del/2017

Additional
Commissioner Of
Income Tax And
Others

APPELLANT

Vs

Make My Trip (India)
P. Ltd And Others

RESPONDENT

Date of Decision: Nov. 10, 2025

Acts Referred:

- Income Tax (Appellate Tribunal) Rules, 1963- Rule 27
- Income Tax Act, 1961-Section 9, 40(a), 143(1), 143(3), 144C, 147, 148, 195

Hon'ble Judges: Vikas Awasthy, Member (J); Brajesh Kumar Singh, Member (A)

Bench: Division Bench

Advocate: Dr. Rakesh Gupta, Somil Agrawal, Somil Agrawal

Final Decision: Allowed/ Dismissed

Judgement

Vikas Awasthy, Member (J)

1. These two appeals by the Revenue and Cross Objections (CO) by the assessee for AY 2007-08 and 2008-09 are taken up together as the facts germane to the issue in the appeal and the CO are identical in both the assessment years.

2. For the sake convenience, appeal of the Revenue and CO of the assessee for AY 2007-08 is taken up as a lead case, hence, the facts are narrated from said appeal/CO.

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3. The assessment for AY 2007-08, in the case of the assessee was completed u/s. 144C r.w.s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') on 31.01.2011 determining total income of the assessee as NIL after setting off of brought forward losses and unabsorbed depreciation. The assessee filed appeal before the CIT(A) against the assessment order inter alia assailing addition of Rs.35,89,81,227/- made to the returned loss of Rs.32,72,39,840/-. The CIT(A) vide order dated 04.02.2013 granted part relief

to the assessee determining loss of Rs.35,39,25,904/-.

4. Thereafter, the case of the assessee for AY 2007-08 was reopened and notice u/s.148 of the Act was issued to the assessee on 31.03.2014. In compliance of said notice, the assessee filed return of income on 01.05.2014 declaring loss of Rs.35,39,25,904/-. The reasons for reopening were supplied to the assessee on 29. 09.2014. The assessee filed objections to reopening of assessment, inter alia assailing assumption of jurisdiction u/s.147 of the Act, as well as validity of notice issued u/s.148 of the Act. The said objections of the assessee were disposed of by the Assessing Officer (AO) on 12.01.2015. Thereafter, the AO vide order dated 05.02.2015 completed assessment u/s. 147 of the Act making disallowance of Rs.3,60,01,993/- u/s.40(a) of the Act. Aggrieved by the assessment order, the assessee carried the issue in appeal before the CIT(A), inter alia assailing reopening of assessment beyond four years, as well as, assailing disallowance u/s.40(a) of the Act on merits. The CIT(A) vide impugned order upheld reopening of assessment but on merits decided the issue in favour of the assessee and deleted the addition for Rs.3,60,01,993/- u/s.40(a) of the Act.

5. Now, the Revenue is in appeal against findings of the AO on merits and the assessee has filed Cross Objections against findings of the CIT(A) in upholding validity of reassessment.

6. Since, the assessee has raised jurisdictional issue, the grounds raised by the assessee in CO are taken up first for adjudication. Dr. Rakesh Gupta, appearing on behalf of the assessee submitted that the assessment has been reopened beyond four years from the end of relevant assessment year. Referring to reasons recorded for reopening at page no. 1 of the paper book, he submitted that there is no whisper in reasons that the assessment has been reopened on account of failure of the assessee to disclose material facts. The reassessment proceedings have been initiated in violation of first proviso to section 147 of the Act. He further submitted that no fresh tangible material was available before the AO to reopen the assessment either. He pointed that in the reasons recorded for reopening, the AO has recorded, "On perusal of the case records,.....". Thus, the AO on re-appreciation of facts/documents already on record has reopened the assessment. The assessee in Form 3CEB has disclosed international transaction of reimbursement of expenses to the tune of Rs.3,60,01,993/-. The same was duly accepted by the Transfer Pricing Officer and the Assessing Officer in original assessment proceedings. Thus, reassessment has been initiated purely on the basis of change of opinion, which is impermissible under law. In support of his submissions, he placed reliance on following decisions: -

(i) Haryana Acrylic Manufacturing Co. vs. CIT, 308 ITR 38 (Del);

(ii) Wel Intertrade (P.) Ltd. v. ITO, 308 ITR 22 (Del); &

(iii) CIT vs. Kelvinator Of India Ltd., 320 ITR 561 (SC).

7. Per contra, the ld. DR opposing Cross Objections filed written submissions, the same are reproduced herein below:

"1. Most respectfully it is submitted that Section 147 authorises and permits the Assessing Officer to assess or reassess income chargeable to tax if he has reason to believe that certain income has escaped assessment.

2. It is also well-settled that the words 'reason to believe' used in section 147 are stronger than the words 'is satisfied'. The belief entertained by the Assessing Officer for the purpose of initiating proceedings under section 147 must not be arbitrary or irrational. It must be reasonable. In other words, it must be based on reasons, which are relevant and material.

3. In the instant case, appellant challenged validity of reassessment proceedings initiated by the Assessing Officer on the ground that assessee has not deducted tax at source on the payments made to M/S Make My Trip Inc. on account of cost of tickets reimbursed. The assessing officer recorded that appellant company failed to comply with the provisions of the section 195 r.w.s. 9 of the Act. Therefore, as per provisions of section 40(a) of the Act, assessing officer disallowed the payment made by the Assessee M/S Make My Trip

(India) Pvt. Ltd. to M/S Make My Trip Inc.

4. From the assessment order it could be observed that, the information on basis of which Assessing Officer had initiated proceedings under section 147 was certain and, it could be construed to be sufficient and relevant material on basis of which a reasonable person could have formed a belief that income had escaped assessment. Thus, there was reason to believe that income of the appellant company has escaped assessment on account of failure on the part of the appellant to disclose fully and truly the material facts/particulars of its income necessary for its assessment.

5. For the reasons mentioned above, it is requested to be held that the reassessment proceedings initiated by the Assessing Officer were within jurisdiction and valid in the eyes of law in as much as reasons recorded by the Assessing Officer satisfied the requirement of section 147.

6. It has been held by various Hon 'ble Courts that for an assessment to be reopened, what is required is that the assessing Officer should have reason to believe that the income of the assessee had escaped assessment and this belief should be of an honest and reasonable person based on reasonable grounds. However, the sufficiency/ correctness of the material/ reason to believe is not a matter to be looked into at that stage. Reliance is placed on:

a. HA Nanji & Co. vs. ITO (1967) 120 ITR 593 (Cal);

b. Sheo Nath Singh vs. AAC (1971) 82 ITR 142 (SC)

c. Raymond Wollen Mills Ltd. vs. ITO (1999) 236 ITR 34 (SC);

d. S. Narayanappa vs. CIT (1967) 63 ITR 219 at page 222 (SC).

(Emphasis supplied)

7. In the light of the legal principles laid down by Hon'ble Courts as discussed above, it is submitted that the assessing officer has not committed any error in facts and in law while issuing the notice u/ s 147 / 148 and was justified in forming the belief that the income of the appellant has escaped assessment for the assessment year under consideration.

8. Otherwise also, in the case of ITO vs. Biju Patnaik (1991) 188 ITR 247, the Apex Court has sounded to note of caution that at the stage of issue of notice u/s 147 / 148 of the Act, the court is not to go into the merits of the controversy whether a particular income is taxable or not. (Emphasis supplied)

9. Taking the totality of the facts and circumstances of this case into consideration, it is requested that the contentions of the AR are rejected and the reopening of the assessment is upheld as valid.”

8. Submissions made by Id. Counsel for the assessee heard, written submissions filed by the Id. DR perused, orders of the authorities below examined, documents and decision on which rival sides have placed reliance considered. The assessee in Cross Objections has assailed validity of reopening of assessment for AY 2007-08. The assessee has also filed a petition under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963 challenging CIT(A) order in upholding reopening of assessment u/s.147 of the Act. The grounds raised by the assessee in application under Rule 27 are argumentative and supports the ground raised by the assessee in Cross Objections challenging reopening of assessment.

9. Before proceedings further it would be apposite to refer to reasons recorded for reopening. The same are as under:-

“Reasons for issue of Notice U/S 148 for the A.Y. 2007-08 in the case of M/S. Make My Trip (India) Pvt Ltd

The assessee company filed its return of income for the AY. 2007-08 on 31.10.2007 declaring a loss of Rs.32,72,39,840/- The return was processed u/s 143(1) at the returned loss. Subsequently scrutiny assessment u/s143(3) was completed at an assessed income of nil after setting off brought forward losses of Rs.3,17,41,387/- vide order dated 31.01.2011.

On perusal of the case records, it is noticed that the assessee has not Deducted Tax at Source on the payments of Rs.3,60,01,993/- made to M/s Make My Trip Inc. on account of cost of tickets reimbursed. As per provisions of section 195 r.wis. 9 of the Income Tax Act, 1961, the assessee was required to deduct TDS on the said amount. However the assessee company has failed to comply with the provisions of the section 195 r.w.s. 9 of the Act. Therefore, as per provisions of section 40(a) of the Act, the payment of Rs.3,60,01,993/- made by the assessee M/s Make My Trip (India) Pvt Ltd. required to be disallowed.

In view of the above, i have reasons to believe that excess claim of expenses amounting to Rs.3,60,01,993/- allowed to the assessee company which resulted into under assessment in the case of M/s. Make My Trip (India) Pvt. Ltd. for the A.Y. 2007-08 within the meaning of section 147/148 of the Income Tax Act, 1961. I am satisfied that Income of Rs.3,60,01,993/- has escaped the assessment and it is a fit case to be reopened u/s 147 of the Income Tax Act by issue notice u/s 148.”

10. It is an admitted position that in the instant case assessment has been reopened beyond the period of four years from the relevant assessment year.

Where the assessment has been reopened beyond four years, the first proviso to section 147 of the Act gets triggered. The AO has to discharge an additional burden to show that income chargeable to tax as escaped assessment by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year in the return of income. In the instant case, the assessee had filed return of income declaring total income as NIL. Along with return of income, the assessee had filed report in Form 3CEB relating to International Transactions. In Form 3CEB, the assessee inter-alia declared reimbursement of expenses amounting to Rs.3,60,01,993/-. The case was referred to the Transfer Pricing Officer (TPO). Neither the TPO nor the AO raised any objection on reimbursement of expenses without deduction of tax at source. Thus, the AO accepted the transaction vide order dated 31.01.2013 passed u/s.144C r.w.s 143(3) of the Act.

11. The Assessing Officer, reopened the assessment after the elapse of more than four years from the end of relevant assessment year for the reasons reproduced above (in para 9). A bare perusal of the reasons would show that mandatory condition set out in first proviso to section 147 of the Act is missing. Nowhere in the reasons the AO has alleged that it is failure on the part of assessee to disclose fully and truly all material facts necessary for his assessment for relevant assessment year, the assessment has been reopened. Nor, does the AO refer to any tangible material which has come into his possession after completion of assessment u/s.143(1) of the Act. Moreover, the reassessment has been reopened not for making any addition but to disallow reimbursement of expenses which were reflected in Form 3CEB. In the case of Haryana Acrylic Manufacturing Co. vs. CIT (supra), the Hon'ble High Court has held that where the assessment is reopened beyond four years period, it is necessary for the AO to overcome bar setup by the proviso to section 147 of the Act. If, the condition is not satisfied, the bar would operate and no action u/s.147 of the Act could be taken. In absence of an allegation in the reasons recorded that the escapement of income had occurred by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment, any action taken by the AO u/s.147 of the Act beyond the four year period would be wholly without jurisdiction.

Expressing similar view, the Hon'ble Jurisdictional High Court in the case of Wel-Intermade (P) Ltd. (supra) held that, since notice u/s.148 of the Act had been issued after the expiry of four years from the end of relevant AY, the proviso to section 147 would come into play. In the reasons recorded, there is no whisper of precondition as set out in proviso i.e. escapement of income on failure of assessee to disclose fully and truly all material facts necessary for the assessment. Therefore, the notice u/s.148 as well as the proceedings thereto are without jurisdiction and deserve to be quashed.

12 As is evident from reasons for reopening of assessment reproduced herein above, the condition set out in first proviso to section 147 of the Act is not satisfied. Thus, in the light of facts of the case and the decisions rendered by Hon'ble Jurisdictional High Court, we hold that reopening of assessment for 2007- 8 was without jurisdiction, hence, quashed.

13. We have also examined case laws on which the Revenue has placed reliance. None of the case laws are in respect of assessment reopened beyond four years from the end of relevant assessment year, hence, does not deal with situation where first proviso to section 147 of the Act comes into play. Therefore, none of the case laws cited by Revenue supports the cause of Department.

14. In the result, Cross Objections of the assessee is allowed.

15. Since, we have decided jurisdictional issue in favour of the assessee and has quashed reassessment proceedings, as a sequitur appeal of Revenue assailing findings of the CIT(A) on merits has to fail. Accordingly, the same is dismissed.

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16. Both sides are unanimous in stating that the factual and legal matrix on jurisdictional issue in AY 2008-09 is identical to AY 2007-08. Therefore, the submissions made for AY 2007-08 would mutatis mutandis apply to AY 2008-09 as well.

17. Both sides heard, orders of the authorities below and reasons recorded for reopening examined. We find that the reasons for reopening in the impugned assessment year are verbatim to AY 2007-08. It is also not in dispute that the assessment for AY 2008-09 has been reopened beyond the period of four years. Since, the facts in the impugned assessment year are identical to the facts in AY 2008-09, the findings given by us while adjudicating jurisdictional issue raised in CO is allowed, for parity of reasons.

18. In the result, CO of the assessee is allowed and appeal of the Revenue is dismissed.

19. To sum up, CO Nos. 48 & 47/Del/2017 of the assessee are allowed and ITA No. 5384 & 5385/Del/2017 of the Revenue are dismissed.