

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No. 520 of 2017 (O&M)
Date of decision: 26.02.2018**

The Pr. Commissioner of Income Tax, Gurgaon

.....Appellant

Vs.

**Shri Kultaj Kataria C/o M/s RRA Tax India, D-28, South Extension,
Part-1, New Delhi.**

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL**

Present: Mr. Tajender Kumar Joshi, Senior Standing counsel for the
appellant- revenue.

Ajay Kumar Mittal,J.

1. The appellant-revenue has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 19.04.2017, Annexure A.IV, passed by the Income Tax Appellate Tribunal, Delhi Bench, 'C', New Delhi (in short, "the Tribunal") in I.T.A. No.2079/DEL/2016 for the assessment year 2007-08, claiming following substantial question of law:-

“Whether in the facts and circumstances of the case, and in law, the ITAT is correct in quashing the assessment because

the Assessing Officer has reason to believe that the assessee has not complied with the provision of Section 40(a)(ia) of the Act and there is no change of opinion as the lapse is on the part of the assessee only?”

2. A few facts relevant for the decision of the controversy involved, as narrated in the appeal, may be noticed. The respondent-assessee is an individual deriving income from hiring of cabs under the name of M/s Genesis Wheels on rent, Gurgaon. The respondent-assessee filed his return of income declaring income of ₹ 4,09,530/- on 31.10.2007 for the assessment year 2007-08. Original assessment was completed under Section 143(3) on 23.12.2009 at a total income of ₹ 6,29,578/-. Subsequently, proceedings under Section 147 of the Act were initiated and notice under Section 148 of the Act was duly served on 18.03.2013. Re-assessment was completed under Sections 143(3)/147 of the Act on 28.03.2014 at a total income of ₹ 83,94,554/- by making the addition of ₹ 70,13,987/- on account of disallowance under Section 40(a)(ia) of the Act and addition of ₹ 7,50,989/- on account of difference of gross receipt as per profit and loss account and income tax return. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax Appeals, [CIT(A)]. Vide order dated 01.02.2016, the appeal was dismissed by the CIT(A). Not satisfied with the order, the respondent-assessee filed an appeal before the Tribunal. Vide order dated 19.04.2017, Annexure IV, the Tribunal allowed the appeal filed by the respondent-assessee and quashed the order dated 28.03.2014 passed by the Assessing Officer, holding that after expiry of four years from the end of the relevant assessment year, no action under Section 147 of the Act could be taken unless escapement of income was due to failure on the

part of the assessee to make a return under Section 139 or in response to the notice issued under Sections 147/148 or disclose fully and truly all material facts necessary for his assessment. It was, thus, concluded that invoking of jurisdiction under Section 147 of the Act by the Assessing Officer was impermissible and could not be sustained. Consequently, order dated 28.03.2014 passed by the Assessing Officer was quashed. Hence, the instant appeal by the appellant-revenue.

3. We have heard learned counsel for the appellant-revenue.

4. The revenue has claimed that the Tribunal had erred in quashing the assessment on the ground that there was change of opinion on his part whereas the assessee had not complied with the provisions of Section 40(a)(ia) of the Act.

5. Examining the said issue it may be noticed that in the assessment order Annexure A.II passed under Sections 143(3)/147 of the Act, it has been categorically recorded by the Assessing Officer that “Based on the information available in the record,” the assessee had made the following payments:-

M/s Gorang Travels	₹ 54,84,000/-
M/s Bedi Tour and Travels	₹ 12,54,219/-
M/s Sandeep Kataria	₹ 2,75,768/-
Total	₹ 70,13,987/-

Accordingly, the Assessing Officer had issued notice to the assessee as to why these payments should not be disallowed under Section 40(a)(ia) of the Act. The Assessing Officer has not been able to refer to any evidence or material on record to suggest as to what prompted him to form the opinion that there existed violation of the provisions of Section 40(a)(ia)

of the Act. In the absence of any material, taking recourse to Section 147 of the Act was unwarranted.

6. The Tribunal while accepting the appeal of the assessee concluded that the conditions required for invoking Section 147 of the Act were conspicuously absent. The revenue did not claim to have come in possession of any material to form the basis for the belief that income escaped assessment. It was, thus, held that the case seemed to involve a matter of change of opinion which was not permissible under law. Thus, invoking of jurisdiction under Section 147 of the Act by the Assessing Officer was held to be impermissible and could not be sustained. Consequently, the order dated 28.03.2014 passed by the Assessing Officer was quashed. Learned counsel for the appellant-revenue has not been able to point out any error or illegality in the order passed by the Tribunal warranting interference by this Court. No substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

February 26 2018
‘gs’

(Anupinder Singh Grewal)
Judge

Whether speaking/reasoned

Yes

Whether reportable

Yes