

**|आयकर अपीलीय न्यायाधिकरण न्यायपीठ, मुंबई|**

**IN THE INCOME-TAX APPELLATE TRIBUNAL “E” BENCH,  
MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT  
&  
SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER**

**आयकर अपील सं./ITA No. 3012/MUM/2024**

**(निर्धारण वर्ष / Assessment Year :2012-13)**

HMG Engineering Pvt. Ltd. 1 <sup>st</sup> Floor, Bandukwala Building, 14 British Hotel Lane, Off B S Marg, Fort, Maharashtra-400023	<b>v/s. बनाम</b>	ITO, Ward (1)(1)(4) Income Tax Department, 531A 5 <sup>th</sup> Floor, Aayakar Bhawan, Maharishi Karve Road, Maharashtra- 400020
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACH3226L</b>		
<b>Appellant/अपीलार्थी</b>	<b>..</b>	<b>Respondent/प्रतिवादी</b>

<b>निर्धारिती की ओर से /Assessee by:</b>	Shri Krutarth K. Desai
<b>राजस्व की ओर से /Revenue by:</b>	Shri Hemanshu Joshi

<b>सुनवाई की तारीख / Date of Hearing</b>	04.06.2025
<b>घोषणा की तारीख/Date of Pronouncement</b>	09.06.2025

**आदेश / O R D E R**

**PER NARENDRA KUMAR BILLAIYA [A.M.]:-**

This appeal by the assessee is preferred against the order dated 30.03.2024 by the NFAC, Delhi [hereinafter referred to as “CIT(A)”] pertaining to Assessment Year [AY] 2012-13.

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2. The sum and substance of the grievance of the assessee is that the CIT(A) erred in confirming the reopening of the assessment as per law, as the AO erred in initiating reassessment proceedings on the same set of facts which were available to the AO at the time of original assessment proceedings.
3. Representatives of both sides were heard at length. Case records carefully perused and the relevant documentary evidences brought on record duly considered in the light of Rule 18(6) of the ITAT Rule, 1963.
4. Briefly stated, the facts of the case are that the assessee filed its return of income electronically on 30.09.2012, declaring a loss of Rs. 6,95,332/-. The assessment was framed vide an order dated 16.03.2015 u/s 143(3) of the Income-tax Act, 1961 [hereinafter referred to as "Act"], by which the total assessed income was determined at Rs. 23,04,668/- after making an *ad-hoc* addition of Rs. 30,00,000/- on account of sundry creditors.
5. Subsequently, vide a notice dated 19.03.2019 issued u/s 148 of the Act, the AO proposed to reopen the completed assessment. The reasons for reopening the assessment read as under:

*"2 In response to notice issued u/s. 148 of the IT Act dated 19/03/2019, for the A.Y. 2012-13, you have vide above referred letter you are requested to provide a detailed reply as to how why and what income has escaped assessment. Further, you have also requested to provide the copy of the necessary permission obtained from Pr. CIT-1, Mumbai.*

*3. Considering the fact that return of income has been filed on 23/04/2019 in response to notice issued u/s. 148 of the Act, the reason as recorded based on which the assessment for the A.Y. 2012-13 has been re-opened are as under.*



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*It is observed that assessee has claimed various expenses like Salary and Wages of Rs. 11,37,906/-, Travelling Expenses including Foreign Travel of Rs.1,76,080/- and Rent Expenses of Rs.3,62,520/- in its return of income for A.Y.2012-13. On perusal of return of income, it is noticed that the assessee has not made any Sales during the year under consideration. Hence, above mentioned all expenses should be disallowed considering its business activity during the year.*

*In the balance sheet of the assessee company there were sundry creditors amounting to Rs. 7,75,16,107/- in A.Y.2012-13 which is huge amount, even though there was no business during the year under consideration. Further, it was also noticed that the liability for Sundry Creditors was increased amounting to Rs. 32,06, 101/- during the year, which is against the information of ROI filed by it as there was no business during the year. Hence, considering above facts details of Sundry Creditors needs to be verified u/s. 41(1) of the I.T. Act for disallowance for cessation of liability.*

*In view of above, there is failure on the part of the assessee to disclose fully and truly all the material facts necessary for its assessment, the undersigned has reason to believe that the income chargeable to tax, amounting to Rs. 16,76,236/- has escaped assessment for A.Y. 2012-13, within the meaning of section 147 of the IT Act, 1961.*

*Moreover, the amendment made in reassessment law by substitution of section 147 of the Income Tax Act, 1961, by Direct Tax Laws (Amendment) Act, 1987 and 1989. The Hon'ble Supreme Court in a group of two cases in CIT v. Kelvinator of India Ltd. [2010] 320 ITR 561 (SC) clarifying the law on the subject matter. The Supreme Court compared the provision before and after the amendment. Prior to the amendment, there should be escapement of income arising on account of non-filing of return or non-disclosure of material facts or the Assessing Officer should have reason to believe escapement in consequence of information in his possession. After the amendment, there is only one condition, that there is "reason to believe" escapement of income.*

*4. Further, it is informed that the notice u/s 148 has been issued after satisfaction of the AO and recording the reasons for the same. The notice u/s. 148 can only be generated electronically through the ITBA portal with the prior approval of jurisdictional Principal Commissioner of Income Tax. Accordingly, the instant notice been issued through ITBA portal and the approval of Pr. CIT-1, Mumbai is also obtained on the ITBA portal itself."*



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6. As the notice u/s 148 of the Act is dated 19.03.2019, the reopening is done after four years from the relevant assessment year. Therefore, the first proviso to Section 147 of the Act squarely applies.

7. During the course of the original assessment proceedings, vide a submission dated 10.01.2015, the assessee has submitted complete details of other advances received, with complete details of sundry creditors. The assessment was completed after examining all the relevant details, considering which the AO has made the *ad-hoc* disallowance of Rs. 30,00,000/- on account of sundry creditors u/s 41(1) of the Act.

8. A perusal of the reasons mentioned hereinabove clearly shows that the AO has reopened the completed assessment for the issues considered by him during the original assessment proceedings without bringing any new material evidence on record. In fact, the reasons themselves show that after reconsidering the balance sheet of the assessee company, the AO reopened the completed assessment. Therefore, in our considered opinion, it cannot be said that the assessee did not disclose fully and completely all material facts relevant for the assessment.

9. Considering the facts of the case in totality, in our humble opinion, the reopening of the completed assessment after four years for the reasons



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mentioned hereinabove is bad in law, and the assessment order deserves to be quashed.

10. Since we have quashed the assessment order, we do not find it necessary to dwell into the merits of the case.

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

Order pronounced in the open court on 09.06.2025.

**Sd/-**

**SAKTIJITT DEY**

**(उपाध्यक्ष/VICE PRESIDENT)**

**Sd/-**

**NARENDRA KUMAR BILLAIYA**

**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai

दिनांक /Date 09.06.2025

अनिकेत सिंह राजपूत/ स्टेनो

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

**सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,**

**सहायक पंजीकार (Asstt. Registrar)**



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**आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.**

