

आयकर अपीलीय अधिकरण, "जी" खंडपीठ मुंबई
INCOME TAX APPELLATE TRIBUNAL, MUMBAI--"G", BENCH

सर्वश्री जोगिन्दर सिंह, न्यायिक सदस्य एवं राजेन्द्र, लेखा सदस्य

Before S/Sh. Joginder Singh, Judicial Member & Rajendra, Accountant Member

आयकर अपील सं./ ITA/1402/Mum/2011, निर्धारण वर्ष /Assessment Year: 2004-05

Godrej & Boyce Mfg. Co.Ltd. Pirojshah Nagar, Vikhroli Mumbai--400 079. PAN:AAACG 1395 D	Vs.	ACIT-10(2) Aayakar Bhavan Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Ms. Amrita Misra (DR)

Assessee by: Shri Nitesh Josh & Ms. Sonalee Godbole(AR)

सुनवाई की तारीख / Date of Hearing: 06.04.2016

घोषणा की तारीख / Date of Pronouncement: 13.04.2016

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

लेखा सदस्य राजेन्द्र के अनुसार PER Rajendra A.M.-

Challenging the order, dated 18.10.2010, of the CIT(A)-21, Mumbai, the assessee has filed the present appeal, raising five grounds of appeal. The first three grounds deal with re-opening of the assessment and the other two grounds are about addition made u/s.14 A and computation of income u/s.115JB of the Act respectively.

Brief Facts:

First, we would like to adjudicate the jurisdictional issue i.e. re-opening of the assessment. Assessee-company, engaged in the business of manufacturing of locks, security equipments, refrigerators and washing machine etc., filed its return of income on 29.10.2004, declaring income of Rs. NIL. The Assessing officer (AO) completed the assessment, on 26.12.2006, determining the income of the assessee at Rs. NIL. However, under the MAT provisions income was assessed at Rs. 3.21 Crores. Later on, a notice u/s. 148 was issued to re-open the assessment after recording the following reasons:

" In this case, assessment u/s 143(3) was completed on 26.12.2006 assessing the total income at Rs. Nil. Assessee was assessed on the Book Profit u/s. 115JB at Rs. 3,21,19,817/- . The Book Profit as disclosed by the assessee was accepted as such without making any adjustment.

It is seen that while computing the Book Profit following items remained to be added-

1. The expenses attributable to earning of dividend (which is an exempt income) which was estimated at Rs. 36,29,828/- and disallowed vide Para 6 of the assessment order. However, this remained to be adjusted while computing the Book Profit u/s. 115JB.

2. Assessee has debited the following provisions in the Profit and Loss Account -

i) Provision for doubtful debts Rs. 7,91,27,870

ii) Provision for service contract expenses Rs. 40,67,000

iii) Provision for leave encashment Rs. 6,98,41,026

The failure to adjust the amount of Rs. 15,66,65,724/- in the profit as disclosed in the Profit and Loss Account while computing the Book Profit for purposes of charging tax u/s 115JB resulted in escapement of income to that extent from charging to tax u/s 115JB of the IT. Act, 1961.

I have reason to believe that the income of Rs. 15,66,65,724/- which was chargeable to tax u/s. 115JB of the I.T. Act, 1961 has escaped assessment. Proceedings u/s 147 is being initiated.

Completing the assessment u/s.143(3)r.w.s.147 of the Act,on 16.11.2009 the AO determined the income of the assessee at Rs.NIL under the normal provisions of the Act and at Rs.18.87 Crores u/s. 115JB of the Act.

3.Aggrieved by the order of the AO,the assessee preferred an appeal before the First Appellate Authority(FAA).Before,him it was argued that the assessee had raised objection to the reopening, that the AO had not disposed off the said objection and completed the reassessment, that AO had proceeded on a completely wrong premises that provisions for leave encashment and bad and doubtful debt should have been added to net profit while computing profit u/s. 115JB, that the reassessment notice was bad in law,that information was already on the tax record of the assessee maintained by the department at the time of original assessment, that no additional objective fact of material came into possession of the AO after original assessment was passed ,that it was a case of change of opinion, that notice u/s. 148 was issued on the basis of audit objections, that there was no formation of belief and there was no application of mind with regard to escapement of assessment of income, that there was no failure on part of the assessee to disclose fully and truly all material facts during the course of initial assessment proceedings, that the initial assessment was completed after due enquiry.

After considering the submission of the assessee and the assessment order, the FAA held that the AO had made disallowance in respect of expenses attributable to earning of dividend income, that as per Explanation I to section 115JB r.w.s. 10(33) and (34) such expenditure was also required to be added in the book profit,that the AO inadvertently omitted to add the same in the book profit,that similarly he also did not consider the items of provisions of doubtful debts etc. while computing the income as per the MAT provisions, that the assessee had failed to demonstrate that during the original assessment proceedings he had examined the provisions to find out as to whether the provisions were on account of ascertained liability, that the AO could not have reopened the completed assessment on the issue of provision for doubtful debts, that assessment was validly re-opened on other issues, that there was no change of opinion.Finally, he held that the AO was justified in reopening the assessment.

4.Before us,the Authorised Representative(AR) stated that an objection was raised by audit party about provisions for service contract and leave encashment,that the AO had informed the audit people that provisions were not for unascertained liability,that there could not be any reason to believe for re-opening the assessment in those circumstances,that the audit party had raised objection about exempt income also,that during the course of assessment the AO had discussed the disallowance u/s.14A of the Act,that the AO could not have benefit of inadvertent mistakes,that the AO had applied his mind for calculating disallowance under section 14A and for computing of income u/s. 115JB of the Act,that it was a case of change of opinion,that there was no failure on part of the assessee to disclose truly and fully the material facts,that re-assessment proceedings were initiated after a period of four years,that the notice was silent about the failure of the assessee,that provisio to section 147 was applicable to the facts of the case .He referred to pages 110,59-60,51,52 and 73 of the Paper Book and relied upon the cases of Rallis India Ltd.(323 ITR 54),Lucas T. V. S. Ltd.(249ITR306),Indian and Eastern Newspaper Society (119 ITR 996)and Jet Speed Audio P.Ltd.(372ITR762).The Departmental Representative(DR) stated that an audit objection could form basis for reopening the completed assessment. That letter sent by AO to audit could not be interpreted as change of opinion.

5. We have heard the rival submissions and perused the material before us. It is true that Section 147 of the Act, permits reopening of a completed assessment in a case where income liable to tax has escaped assessment. However, the proviso under the section carves out an exception and shifts the burden on the AO in a case where a period of four years has elapsed from the end of the relevant assessment year. The proviso stipulates three conditions. The AO is required to show from the record and the facts of the case that any one of the three conditions stands satisfied before he can assume jurisdiction to issue notice for reassessment. The conditions are non-filing of return and not responding to statutory notice. The third condition requires the AO to establish that there was any omission or failure on the part of the assessee to disclose fully and truly all material facts relevant for the assessment of the assessment year in question. In other words, merely having a reason to believe that income had escaped assessment is not sufficient to reopen assessments beyond the period of four years. The escapement of income must also be occasioned by the failure on the part of the assessee to disclose material facts fully and truly. This is a necessary condition for overcoming the bar set by the proviso to section 147 and if this condition is not satisfied, the bar would operate and action taken under section 147 would be invalid.

It is not the case of the AO that there was any omission or failure on the part of the assessee to disclose fully and truly all material facts relevant for the assessment of the assessment year in question. In fact the statement showing computation of total income, showed that all the relevant details for computing book profit as per the provisions of section 115JB of the Act. Therefore, it is apparent that there was no omission or failure on the part of the assessee as required by the provisions of the proviso to section 147 of the Act. Hence, the notice issued under section 148 of the Act, which was admittedly issued beyond a period of four years, was bad in law and without jurisdiction.

Here, we would like to refer to the case of RPG Transmissions Ltd. (359 ITR 673) delivered by the Hon'ble Madras High Court. In that matter the Hon'ble Court has held as under:

*"Section 147 of the Income-tax Act, 1961, is the enabling provision which deals with escaped assessment under the heading 'Income escaping assessment'. The section enunciates the ground on which the income which has escaped assessment can be assessed or reassessed. The power of the Assessing Officer to assess or reassess such income or other income chargeable to tax, which has escaped assessment is circumscribed by the preceding words of the section that is, 'if the Assessing Officer has reasons to believe that any income chargeable to tax has escaped assessment'. **The Assessing Officer's finding should categorically establish that the assessee has failed to disclose 'fully and truly' the material facts which resulted in the escapement of the assessment on taxable income** (emphasis by us)....."*

Considering the above discussion, judgment of the Hon'ble Madras High Court and the fact that the AO had not proved that the escapement of income was result of failure on part of the assessee to disclose fully and truly the material facts for making the assessment, we hold that the reopening was not valid. Effective ground of appeal (GOA-3) is decided in favour of the assessee. The other arguments like change of opinion or re-opening was based on an audit objection are not being decided, as there is basic legal flaw in re-opening. The AO has not mentioned that the assessee had failed to disclose material fact. Proving of the said fact is the next stage. Therefore, as stated earlier, we hold that notice issued u/s. 148 and consequent assessment was not valid.

6.We have decided the jurisdictional ground in favour of the assessee,so,remaining two grounds of appeal are not being adjudicated.

As a result,appeal filed by the assessee stands allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील मंजूर की जाती है.

Order pronounced in the open court on 13th April, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 13 अप्रैल, 2016 को की गई।

Sd/-

जोगिन्दर सिंह /Joginder Singh)

न्यायिक सदस्य / **JUDICIAL MEMBER**

Sd/-

(राजेन्द्र / RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांकDated :13 .04.2016.

Jv.Sr.PS.

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

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR “A ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, A खंडपीठ,आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल.

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.