<u>आयकर अपीलीय अधिकरण, मुंबई</u>

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES 'B' MUMBAI

सर्वश्री आय.पी. बंसल, न्यायिक सदस्य एवं श्री संजय अरोड़ा, लेखा सदस्य के समक्ष ।

BEFORE SHRI I.P. BANSAL, JUDICIAL MEMBER /AND

SHRI SANJAY ARORA, ACCOUNTANT MEMBER

ITA NO.6236/MUM/2011, A.Y. 2004-05

M/s.Mahameru Trading Co. (P) Ltd. 394C, Lamington Chambers, Lamington Road, Mumbai 400 004 PAN AAACM 7131M (Appellant)	Vs.	The Income Tax Officer Ward 5(2)(3), Mumbai. (Respondent)

Appellant by	:	Shri Rakesh Joshi
Respondent by	:	Shri Mourya Pratap

Date of hearing	:	08/07/2014
Date of pronouncement	:	08/07/2014

ORDER

PER I.P.BANSAL, J.M,

This is an appeal filed by the assessee and it is directed against the order passed by Ld. CIT(A)-9, Mumbai dated 12/7/2011 for assessment year 2004-05. Grounds of appeal read as under:

> *1) On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in reopening the assessment u/s 147 after 4 year and without recording proper reasons for reopening.*
>
> *2) On the facts and circumstances of the case as welt as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in not allowing the unabsorbed business toss of Rs. 71,44,340/- to be set off and carry forward to the subsequent year without considering the facts and circumstances of the case.*
>
> *3) On the facts and circumstances of the case as well, as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in not*

allowing the unabsorbed business loss of Rs. 71,44,340/- to be set off and carry forward to the subsequent year without appreciating the fact that the loss belongs to A Y 1999-2000, 2001-2001 & 2001-02 and returns for these years were filed on time and accepted by the department.

2. Revised grounds of appeal of the assessee read as under:

"1) On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in reopening the assessment u/s 147 after 4 years without considering the facts and circumstances of the case.

2) On the facts and circumstances of the case as well as in Law, the Learned CIT(A) has erred in confirming the action of Learned Assessing Officer in not allowing to carry forward current year as well as brought forward business Loss to the subsequent years without considering the facts and circumstances of the case."

3. While arguing the appeal, it was submitted by Ld. AR that Ld. CIT(A) has committed an error in upholding the validity of the reassessment order. He submitted that the reasons for which the assessment proceedings were reopened do not contain any income which is made subject matter to taxation in the re-assessment order. He invited our attention to the reasons, copy of which is placed at page 1 of the paper book and which read as under:

"The assessee filed its Return of Income on 30/10/2004 declaring a total loss of Rs.13,345/- after claiming an exemption of Rs.9,46,200/- on the dividend income earned during the year. The return was processed u/s. 143(1) of the Act on 12/01/2005. accepting the returned loss.

It is seen from the return filed by the assessee that during the assessee has received Rs.9,46,200/- as dividend which is shown as income in the P&L Account and claimed as exempt in the computation of income the assessee has debited Rs.13,345/- as business expenses and claimed as loss from business and carried forward the same to the next year. It is also seen that on page 12 coloumn 15 under the head Nature of business or Profession the assessee has declared its business as "Trading in shares and securities". Since the assessee has admittedly carrying on business of trading in shares and securities the dividend received of Rs.9,46,200/- cannot be claimed as exempt under the head Business/profession. Hence, the dividend earned of Rs.9,46,200/- on which the assessee has wrongly claimed exemption is to be withdrawn and the amount of Rs.9,46,200/- should be brought to tax under the head income from Business/Profession.

In view of the above, I have reason to believe that income of Rs.9,46,200/- has escaped assessment and needs to be brought to tax."

3.1 Referring to aforementioned reasons it was submitted by him that assessment was reopened for the reason that income of Rs.9,46,200/- has escaped the assessment. He submitted that the said amount represent dividend income which is exempted under section 10(34) of the Income Tax Ac 1961 (the Act) He submitted that the following computation of income has been made by the AO in the reassessment order.

I. Income from Business:	
Net Profit as per P&L A/c.	Rs. 9,32,855
Less Dividend income (exempt)	Rs. 9,46,200
	(-) Rs. 13,345
Add: Disallowance u/s.14A as discussed	Rs. 13,345
Gross Total Income	Nil
Total Income	**Nil**

3.2 Referring to above computation he submitted that there was no escapement of income with respect to a sum of Rs.9,46,200/- as the same has been held to be exempted by the AO and to that extent there was no escapement of income. Ld. AR has relied upon decision of Hon'ble Bombay High Court in the case of CIT vs. Jet Airways (India) Ltd., 331 ITR 231, in which it has been held that AO may assess or re-assess the income in respect of any issue which comes to his notice subsequently in the course of proceedings though the reasons for such issues were not included in the notice; however, if after issuing a notice under section 148 of the Income Tax Act, 1961, the AO accepted the contention of the assessee and holds that the income on which he has initially formed a reason to believe had escaped assessment, as a matter of fact not escaped assessment, it is not open to him independently to assess some other income.

3.3 Thus, it was pleaded by Ld. AR that reassessment proceedings should be held invalid.

4. On the other hand, Ld. DR relied upon the order passed by Ld. CIT(A), vide which it has been held that reassessment proceedings have rightly been carried out.

5. We have heard both the parties and their contentions have carefully been considered. From the conjoint reading of the reasons and computation made in the reassessment order, it is clear that the income on which the AO has initially formed a reason to believe that it had escaped assessment did not as a matter of fact escaped assessment. Therefore, the case of the assessee will squarely fall within the ambit of aforementioned decision of Hon'ble Bombay High Court i.e. in the case of Jet Airways (India) Ltd. (supra). Following the said decision we hold that reassessment proceedings in the present case are not valid. Therefore, the impugned assessment is invalid and is quashed.

6. Since we have held that reassessment proceedings are not valid and assessment order is quashed, we need not to go into the merits of the other issues which have also been raised in the present appeal. With these observations we allow the appeal filed by the assessee.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 08/07/2014
आदेश की घोषणा खुले न्यायालय में दिनांकः 08/07/2014 को की गई ।

Sd/-	Sd/-
(संजय अरोड़ा /SANJAY ARORA)	(आय.पी. बंसल **/ I.P. BANSAL**)
लेखा सदस्य **/ ACCOUNTANT MEMBER**	न्यायिक सदस्य **/ JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated 08/07/2014

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**

व.नि.स./*Vm*, Sr. PS