THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

I.T.T.A.No.484 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

For the assessment year 2003-04, an order of assessment was passed under Section 143(3) of the Income Tax Act, 1961 (for short "the Act") on 18.01.2016. Subsequently on 23.03.2010 the assessment was re-opened under Section 147 of the Act and, by his order dated 27.12.2010, the Assessing Authority added 90% of the mining franchise fee in computing the tax liability of the assessee.

In appeal, the Commissioner of Income Tax (Appeals) observed that, in view of the documents filed by the assessee and the facts disclosed by them, deduction under Section 80HHC of the Act was considered and recomputed; from the reasons recorded by the Assessing Authority, it was evident that there was no failure on the part of the assessee to fully and truly disclose all material facts necessary for the assessment; more than four years had elapsed from the end of the financial year in which the original return was filed; no new information had come forth after completion of the assessment under Section 143(3) dated 18.01.2006; the reasons recorded by the Assessing Authority showed that he only wanted to re-compute the deduction under Section 80HHC of the Act on the basis of the information provided by the assessee themselves; deduction, under Section 80HHC of the Act, was the subject matter of scrutiny under Section 143(3) proceedings; after recomputing the same, addition on the basis of the existing information was only a change of opinion; and there was no failure on the part of the assessee to fully and truly disclose all the material facts. The order of the Assessing Authority was set aside.

Aggrieved thereby, the Revenue carried the mater in appeal to the Tribunal which, by order dated 12.07.2013, dismissed the appeal

holding that re-computation of the earlier deduction under Section 80HHC, on the basis of the existing information, was only a change of opinion; and there was no failure on the part of the assessee to fully and truly disclose all material facts. Before us Sri B.Narasimha Sarma, learned Senior Standing Counsel for the Income Tax Department, would reiterate the very same submissions urged before the Tribunal.

Section 147 of the Act relates to "income escaping assessment" and, thereunder, if the Assessing Authority has any reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income, and also any other income chargeable to tax which has escaped assessment, and which comes to his notice subsequently in the course of proceedings under Section 147 or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned. Under the proviso thereto, where the assessment under Section 143(3) or Section 147 has been made for the relevant assessment year, no action shall be taken under Section 147 after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under Section 139 or in response to a notice issued under Section 134(1) or Section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year. Under Explanation (1) thereto, production before the Assessing Officer of account books or other evidence, from which material evidence could with due diligence have been discovered by the Assessing Officer, will not necessarily amount to disclosure within the meaning of the proviso.

On expiry of four years, from the date on which an assessment is made under Section 143(3) of the Act, it is only when the conditions stipulated in the proviso to Section 147 of the Act are satisfied, can the assessment be reopened by the Assessing Authority. In terms of the

proviso, it is only when an income chargeable to tax has escaped assessment by reason of the failure on the part of the assessee (a) to make a return; or (b) to disclose fully and truly all material facts necessary for his assessment, can the assessment be reopened to bring the income, which has escaped assessment, to tax under the Act.

The first limb of the proviso to Section147 of the Act is not attracted, as the respondent had filed their returns. The only question is whether they had failed to fully and truly disclose all material facts necessary for their assessment. While reopening the assessment for the assessment year 2003-04, the Assessing Authority re-computed the allowance granted earlier under Section 80HHC of the Act, and added 90% of the mining franchise fee which was allowed earlier as a deduction. No finding has been recorded by the Assessing Authority that the assessee had failed to fully and truly disclose all material facts necessary for their assessment.

In his order, the Commissioner of Income Tax (Appeals) has categorically held that the deduction under Section 80HHC of the Act was the subject matter of scrutiny in assessment proceedings under Section 143(3) of the Act; re-computation of the same deduction, on the basis of existing information, is only a change of opinion; and there was no failure on the part of the assessee to fully and truly disclose all the material facts. This finding of fact by the Commissioner of Income Tax (Appeals) was affirmed by the Tribunal. It is not even contended before us that the said finding, recorded both by the Commissioner of Income Tax (Appeals) and by the Tribunal, suffers from perversity.

As the jurisdiction, which this Court can exercise under Section 260-A of the Act, is only if a substantial question of law arises for consideration, and as the findings recorded by the Commissioner of Income Tax (Appeals) and the Tribunal, on the inapplicability of the proviso to Section 147 of the Act to the case on hand, are findings of fact, we are satisfied that no question of law, much less a substantial

question of law, arises for consideration necessitating the present appeal being entertained under Section 260-A of the Act.

The appeal fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

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RAMESH RANGANATHAN, J

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M. SATYANARAYANA MURTHY, J

Date: 16.02.2016
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THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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