

*THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

*THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

+I.T.T.A.No. 261 of 2015

% 13-07-2016

The Commissioner of Income Tax-IV,
Hyderabad .. Appellant

Vs.

\$ M/s. Quality Care India Limited,
Hyderabad .. Respondent

<GIST:

>HEAD NOTE:

! Counsel for appellant : Mr. J.V. Prasad

^ Counsel for respondent : The Senior Standing Counsel
for

Income Tax Department

? CASES REFERRED :

1) (2000) 241 ITR 672

- 2) (2006) 286 ITR 674
- 3) (2006) 286 ITR 674

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

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THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

I.T.T.A.No. 261 of 2015

Between:

The Commissioner of Income Tax-IV,

Hyderabad

.. Appellant

and

M/s. Quality Care India Limited,

Hyderabad

.. Respondent

DATE OF JUDGMENT PRONOUNCED: 13.07.2016

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

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1. Whether Reporters of Local newspapers
Yes/No
may be allowed to see the Judgments?
2. Whether the copies of judgment may be
Yes/No
marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to Yes/No
see the fair copy of the Judgment?

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

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I.T.T.A.No. 261 of 2015

JUDGMENT: (*Per VRS,J*)

Aggrieved by a common order passed by the Income Tax Appellate Tribunal, Hyderabad, in a group of three appeals, holding the reopening of assessment to be improper, in respect of the assessment year 2004-2005, the Revenue has come up with the above appeal under Section 260A of the Income Tax Act, 1961 (for brevity 'the Act').

2. Heard Mr. J.V. Prasad, learned senior standing counsel for the Income Tax Department, appearing for the

appellant.

3. The respondent herein is a super speciality hospital. For the assessment year in question, they filed a return of income on 29.10.2004 declaring a loss of Rs.8,01,95,180/-. The return was processed under Section 143(1) of the Act.

4. Subsequently, there was a search and seizure operation under Section 132, as a consequence of which, proceedings were initiated under Section 153A. The assessment was completed under Section 143(3) r/w Section 153A. After completion of the assessment, the Assessing Officer reopened the assessment under Section 147 by issuing a notice under Section 148, on 31.03.2011.

5. The reason for reopening of the assessment was that while initiating proceedings under Section 147, an amount of Rs.4,73,75,000/- was identified to the assets acquired, which had been capitalized. Therefore, after the total payment of interest to the tune of Rs.6,99,76,000/-, a balance of Rs.2,26,01,000/- had been charged to P & L account as an extraordinary item.

6. After reopening, the Assessing Officer passed an order on 26.12.2011. The assessee filed a statutory appeal before the CIT (Appeals). The appeal was allowed, holding that the rationale behind the issue of notice under Section 148 and the basis for reopening the assessment was not tenable.

7. As against the said order, the Revenue filed a further appeal to the Tribunal. The Tribunal dismissed the appeal along with two other appeals relating to the assessment years 2005-2006 and 2006-2007. Therefore, the Revenue is before us.

8. The substantial questions of law, with which the Revenue has come up with the above appeal, are as follows:

- 1) Whether on facts and circumstances of the case, the Hon'ble ITAT is justified in upholding the order of the CIT(A) that the reopening of assessment u/s 147 of the Act is unsustainable in law, without appreciating the provisions of Explanation-I to proviso to Section 147 of the Act?
- 2) Whether on facts and circumstances of the case, the Hon'ble ITAT is correct in not considering the decision of the Apex Court in the case of Raymond Woolen Mills Ltd. Vs. ITO

(236 ITR 34)(SC) wherein it was held that in determining the validity of re-assessment proceedings, it has only to be seen whether there was prima facie material, on the basis of which, the department could reopen the case?

- 3) Whether on facts and circumstances of the case, the Hon'ble ITAT is justified in upholding the order of the CIT(A) deleting the disallowance made by the AO, on the ground that the assessee has not claimed any depreciation on the interest capitalized against the assets, without appreciating that the assessee wrongly calculated the interest payable on the share application money refunded and that the interest incurred, related to assets acquired, was capitalized and therefore, cannot be allowed as revenue expenditure?

9. Though the third question of law revolves around the issue of revenue expenditure, the same is actually on the merits of the case. It is only if we answer the questions of law 1 and 2 revolving around the validity of reopening of the assessment in favour of the Department, the 3rd question of law would arise for consideration. Therefore, let us first take up the first two questions of law for consideration.

10. Admittedly, the case on hand is one, where the reopening of assessment was sought to be made after the

expiry of four years. Therefore, the Revenue should satisfy the first proviso to Section 147 that there was either a failure on the part of the assessee to make a return under Section 139 or that there was a failure on the part of the assessee to respond to a notice issued under Section 142(1) or Section 148 or that there was a failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment year.

11. The case on hand, even according to the stand taken by the Revenue, did not fall under the first two categories. According to the learned standing counsel for the Department, the case on hand would fall under the category of failure to disclose fully and truly all the material facts. The learned standing counsel relies upon Explanation-I to Section 147, to contend that failure to disclose should be perceived in the manner stipulated in Explanation-I.

12. It is true that under Explanation-I, the production before the Assessing Officer of the books of account 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 first proviso to Section 147. But the

material fact, which forms the very basis for the Assessing Officer to complete the assessment, cannot be totally ignored by the Assessing Officer, enabling him to take refuge under Explanation-I.

13. If we look at the case on hand, it is seen that the original assessment was completed under Section 143(1), after the assessee filed a return of income on 29.10.2014. Thereafter, there was a search and seizure operation under Section 132, leading to the proceedings being initiated under Section 153A. Thereafter, the assessment was again completed under Section 143(3).

14. Therefore, this is not a case of normal assessment, which has gone on in a routine manner, without any suspicion in the eyes of the Assessing Officer. This is a case where a scrutiny assessment was made, after which, a search and seizure operation was conducted and, thereafter, the assessment was again completed under Section 143(3) r/w Section 153A.

15. In a third round of attack, the Assessing Officer claimed that as per the annual report of the Directors for the previous year 2003-2004, an amount of Rs.4,73,75,000/- was identified to the assets acquired, from out of the total interest of Rs.6,99,76,000/- paid to another Company. The Directors' report forms part and

parcel of the records available for scrutiny. The Department could have taken refuge under Explanation-I, if there had been a processing of the return only once. But in this case, there had been a processing of return twice over. On the second occasion, the processing of the return took place, pursuant to a search and seizure operation.

16. In ***Fenner (India) Limited Vs. Deputy Commissioner of Income Tax***^[1], a learned Judge of the Madras High Court explained the position with regard to Section 147 as follows:

“The duty of an assessee is limited to fully and truly disclose all the material facts. The assessee is not required thereafter to prepare a draft assessment order. If the details placed by the assessee before the AO was in conformity with the requirements of all applicable laws and known accounting principles, and materials details had been exhibited before the AO, it is for the AO to reach such conclusions as he considered was warranted from such data and any failure on his part to do so cannot be regarded as assessee's failure to furnish the material facts truly and fully. Any lack of comprehension on the part of the AO in understanding the details placed before him cannot confer a justification for reopening the assessment, long after the period of four years had expired. On the facts of this case, it is clear that the escapement of income if any on this account is not on account of any failure on the assessee's part to disclose the

material facts fully and truly. The notice issued by the AO in exercise of his power under Section 147, therefore, cannot be sustained.”

17. In ***Assistant Commissioner of Income Tax Vs.***

ICICI Securities Primary Dealership Limited^[2], the

Supreme Court pointed out that when all details with respect to the stocks and shares and the income derived therefrom are disclosed in the return, a dispute as to whether the loss incurred was a business loss or speculative loss, cannot come under the category of failure to disclose.

18. Again, in ***Commissioner of Income Tax Vs. Elgi***

Finance Limited^[3], before the Madras High Court, the

assessee had furnished details regarding the acquisition of various machineries and assets and the details regarding leasing out of those machineries together with the lease rent received as well as computation of depreciation, but an attempt to reopen the assessment was made on the ground that depreciation was claimed and allowed at an higher rate. The Court held that when all material facts had been disclosed truly and fully, the question as to the correct rate of depreciation to be

allowed cannot be a reason for reopening after four years.

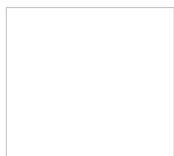
19. Therefore, this is a case where, in our considered opinion, the Tribunal was right in holding that the case would not fall within the purview of the proviso to Section 147 and that even Explanation-I will not go to the rescue of the Revenue. Therefore, we find no justification to entertain the appeal and, hence, it is dismissed.

Consequently, miscellaneous petitions if any pending in the appeal shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J

**A. SHANKAR
NARAYANA, J.**

13th July, 2016
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