

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO.1357 OF 2016

Pr. Commissioner of Income Tax-2

.. Appellant

v/s.

M/s. L & T Ltd.

.. Respondent

Mr. Suresh Kumar for the appellant

Mr. Jehangir Mistri, Senior Counsel a/w Mr. Atul Jasani for the respondent

**CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.**

DATED : 11th JANUARY, 2019

P.C.

1. The Revenue is in appeal against the judgment of Income Tax Appellate Tribunal ("the Tribunal" for short) raising following question for our consideration :-

"Whether on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the notice issued u/s 148 was not valid on ground that AO has not demonstrated the failure of the assessee in disclosing the material fact?"

2. The appeal as arises out of the judgment of the Income Tax Appellate Tribunal in which it was held that the notice of reopening

which was issued beyond the period of 4 years from the end of the relevant assessment year, was invalid. We may reproduce the reasons recorded by the Assessing Officer for issuing such a notice :-

“(i) It was seen from the records that while computing the deduction u/s 80-IA, certain pass through components like Fuel adjustment Charges (FAC), electricity duty, wheeling charges, grid support charges etc. have not been considered for arriving at the market value of the electricity.

(ii) For the purpose of claiming deduction u/s 80-IA, excess profit from the generation of electricity has been shown as against '16% return on investment' fixed by the Ministry of Power.

(iii) Various expenses like interest, commission, brokerage and corporate overheads were not debited to the separate Profit & Loss A/c. Further, sales and administrative expenditure is not proportionate to the expenditure debited in consolidated P&L A/c to the profit of 80-IA units, which has resulted in excess deduction u/s 80-IA.

(iv) The assessee claimed deduction u/s 80-IA, 80HHB, 80HHBA, 80-HHC, 80HHE etc. However, exemption claimed u/s 80-IA was not reduced from other chapter VI-A deduction as per provisions contained in Section 80-IA.

(v) Deduction u/s 80-IA was wrongly claimed in respect of work on contract basis for various Govt. Agencies, which cannot be considered as infrastructure provider.”

3. Perusal of the reasons recorded by the Assessing Officer would show that the Tribunal was perfectly correct in coming to the conclusion that the notice of reopening of assessment was invalid. From the reasons we gather that there was no element of lack of true and full disclosure on the part of the assessee, which resulted into any income chargeable to tax escaping assessment. The reasons clearly reveal that the Assessing Officer was proceeding on the material which was already on record. In the absence of the statutory requirement of income chargeable to tax have been escaped assessment due to the failure on the part of the assessee to disclose truly and fully all material facts been satisfied, the Tribunal correctly held that the notice of reopening of assessment was invalid. No question of law arises.

4. The tax appeal is dismissed.

(M.S. SANKLECHA, J.)

(AKIL KURESHI, J.)