

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

WRIT PETITION NO. 1631 OF 2019

Menck GMBH

.. Petitioner

v/s.

Assistant Commissioner of Income – Tax
and Anr.

.. Respondents

Mr. Madhur Agarwal I/b Mr. Atul Jasani for the appellant
Mr. P.C. Chottaray for the respondent

**CORAM : M.S. SANKLECHA &
NITIN JAMDAR, J.J.**

DATED : 16th AUGUST, 2019

P.C.

1. This petition under Article 226 of the Constitution of India challenges the order dated 31st October, 2018 passed by the respondent no.1 – the Assistant Commissioner of Income Tax under Section 147 of the Income Tax Act, 1961 (the Act). By the impugned order, the Assessing Officer – respondent no.1 has dropped the assessment proceedings initiated under Section 147 of the Act.

2. It is the grievance of the petitioner that once the Assessing

Officer has issued a notice for reassessment under Section 147/148 of the Act and the assessee has not opposed the same, then it is not open to the Assessing Officer to drop the same. This dropping of proceedings, the petitioner submits is not permissible.

3. It is an agreed position between the parties that the issue raised herein stands concluded by the decision of this Court in case of ***K. Sudhakar S. Shanbhag Vs. Income Tax Officer (2003) 126 Taxman 476*** in favour of the respondent. In the above case, this Court has held that dropping of re-assessment proceedings by the Assessing Officer under Section 147 of the Act, even in the absence of the assessee challenges the notice under Section 147/148 of the act, is justified. This Court emphasized that the proceedings for re-assessment under Section 147 of the Act is for the benefit of the Revenue.

4. However, Mr. Agarwal, learned Counsel appearing in support of the petition invites our attention to the decision of Allahabad High Court in the case of ***Commissioner of Income Tax Vs. Vali Brothers, (2005) 149 Taxmann 233 (All.)*** where a different view is taken in a

Reference from the Tribunal. In the above case, the Court while upholding the view of the Tribunal, held that once a return has been filed pursuant to a notice under Section 147/148 of the Act, then even if the proceedings are dropped, yet the assessee is entitled to refund of tax paid in terms of Section 237 of the Act. This as the return filed on account of reopening of assessment, would be deemed to be a return furnished under Section 139 of the Act.

5. We note that in the present case, we are not concerned with any application for refund made under Section 237 of the Act. Admittedly the same is time barred and no application to Central Board of Direct Taxes seeking extension of time to file the refund application is also made. Therefore, the decision of the Allahabad High Court may not apply to the present facts. This as the above decision did not hold that it is required of the Assessing Officer to complete reassessment proceedings initiated by him under Section 147/148 of the Act in the absence of any objection by the assessee.

6. However, in any case, as it is an admitted position that issue stands concluded by the decision of this Court in the case of

K. Sudhakar S. Shanbhag (supra) in favour of the Revenue, we are not inclined to entertain the petition.

7. Accordingly, the petition is dismissed.

(NITIN JAMDAR, J.)

(M.S. SANKLECHA, J.)