

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.10.2020

CORAM :

THE HON'BLE DR. JUSTICE VINEET KOTHARI  
AND  
THE HON'BLE MR.JUSTICE M.S.RAMESH

**TAX CASE (APPEAL) NO.1377 OF 2008**

Commissioner of Income Tax  
Chennai.

.. Appellant

-VS-

M/s.Sterling Tree Magnum India Ltd.,  
32, Dermonite Colony,  
TTK Road, Alwarpet,  
Chennai – 600 018.

.. Respondent

**PRAYER:** Tax Case Appeal filed under Section 260A of Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Madras “C” Bench, dated 31.01.2008 in ITA No.44/Mds/2006 for the Assessment Year 1997-98.

For Appellant : Ms.Pushya Sitaraman

For Respondent : Mr.G.Baskar

**J U D G M E N T**

***(Judgment of the Court was made by Dr. VINEET KOTHARI, J.)***

This Tax Case (Appeal) has been filed by the Revenue under Section 260-A of the Income Tax Act, 1961, raising the following purported substantial questions of law arising from the order of the learned Income Tax Appellate Tribunal dated 31.01.2018 for the Assessment Year AY 1997-98 whereby the learned Tribunal has allowed the appeal and held that re-assessment order under Sections 147 - 148 of the Income Tax Act, 1961 for the Assessment Year 1997-1998 was not justified. The relevant observations of the learned Tribunal in the impugned order are quoted below for ready reference:

*“8.The assessee has furnished all the details of income in the profit and loss account and it was considered by the assessing officer u/s.143(3) in the scrutiny assessment. There is no failure on the part of the assessee to disclose fully and truly all material facts for the purpose of assessment for this assessment year. When the entire facts were made available to the assessing officer at the time of original assignment, he*

*should have made use of the materials available before him and should have completed the assignment. The assessing officer can not claim at a later stage that he had not applied his mind initially while completing the original assessment and at his will, for no fault on the part of the assessee to furnish information called for, reopen the assessment after the end of 4 years from the end of the relevant assessment year. This is against the principles of natural justice. The assessee has rightly placed reliance on the judgment of the High Court of Uttarakhand in the case CIT & ANR Vs. Saipem Spa (2008)(1 DTR 21) wherein it was held as under:*

*“Even if it was a case of deemed escapement of income within the meaning of Expln.2(c)(ii) of s.147, there being no fault on the part of assessee in making full and true disclosure), reopening of assessment after expiry of four years was barred by limitation under proviso to s.147.”*

*Hence in our opinion, the assessing officer was not justified in reopening the assessment after the expiry of four years from the end of the relevant assessment year, when there was absolutely no failure on the part of the assessee to disclose truly and fully all material facts. Hence issue of*

*notice u/s.148 r.w.s. 147 dated 15.3.05 is without any jurisdiction. We place reliance on the decision of the ITAT, Chennai "D" Bench in the case of Lucky Valley Investments & Holdings Ltd., Vs. DCIT (98 TTJ 491) wherein the Tribunal held that the assessee company having made true and complete disclosure regarding interest due from its subsidiary company in the notes attached to the statement of accounts clarifying that it would account for such interest on receipt basis, reopening of assessment merely on the basis of audit objection was bad in law in the absence of any other material. In the present case before us also, reopening was made by the assessing officer merely on the basis of audit objection only. In our opinion, reopening is invalid since the assessee has disclosed truly and fully all material facts regarding the method of recognition of income in the note attached to the statement of accounts wherein it was clarified that it would spread the income over a period of 20 years. Accordingly, we annul the reassessment and allow the C.O. raised by the assessee.*

*9. Since we have allowed the C.O raised by the assessee and the reassessment order is annulled the appeal of the revenue becomes infructuous and accordingly the appeal*

*of the revenue is dismissed as infructuous.*

*In the result the C.O of the assessee is allowed and appeal of the revenue is dismissed.”*

2.The substantial question of law suggested in the Memorandum of Appeal are as under:

*“1.Whether in the facts and circumstances of the case, the Tribunal was right in holding that the re-opening of assessment was bad in law?”*

3.Both the learned counsel drew our attention to the re-assessment order dated 31.03.2005 in which while making the addition in question, the learned Assessing Authority himself has candidly admitted that despite addition having been made in the total income, the concealment penalty under Section 271 (1)(c) of the Income Tax Act, 1961, has not initiated, since no aspect of concealment on the part of the assessee was noticed. But the addition to total income was on account of change of opinion. The relevant part of the said order is quoted below for ready reference: -

*“Note to the Assessee*

*Concealment penalty u/s.271(1)(c) of the Income Tax Act, 1961 is not initiated in this case since no aspect of concealment is noticed while completing the assessment. The addition to total income is on account of change of opinion and the income deferment made by the assessee as per its normal practice of accounting has been brought to tax.”*

4. Therefore, even though the revenue of the State is involved in the present appeal filed by the Revenue may be more than Rs.1 Crore, the limit prescribed in the CBDE Circular for withdrawal of the appeal, we do not find any merit in the present appeal filed by the Revenue for the reason that the learned Tribunal has categorically held that there was no failure on the part of the assessee, but disclosed the relevant facts and therefore, merely on the basis of the audit objection or change of opinion and re-assessment under Sections 147 & 148 of the Income Tax Act, 1961, could not be made beyond the period of four years from the end of the relevant assessment year 1997-98.

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5. In the present case, the notice under Section 148 of the Income Tax Act, 1961, was issued on 26.03.2004, as per the assessment order much

beyond the period of four years from the end of relevant AY 1997-98. Therefore, in our opinion, the learned Tribunal was justified in annulling the re-assessment order of the AY 1997-98 on the ground of same being barred by limitation as per proviso to Section 147 of the Income Tax Act, 1961. The position of law in this regard being already settled by a catena of judgments of the Hon'ble Supreme Court as well as this Court, we do not find any substantial question of law to be arisen in the present appeal filed by the Revenue and therefore, the Tax Case (Appeal) filed by the Revenue is bound to be dismissed and accordingly, the same is dismissed. No costs.

(V.K., J.)

(M.S.R., J.)

09.10.2020

Index : Yes/No

Internet : Yes/No

Speaking / Non-speaking order

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**Dr.VINEET KOTHARI, J.**

**AND**

**M.S.RAMESH, J.**

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To

The Income Tax Appellate Tribunal  
Madras "C" Bench.



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