IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2020

CORAM

THE HON'BLE Dr. JUSTICE VINEET KOTHARI
AND
THE HON'BLE Mr. JUSTICE R.SURESH KUMAR

Tax Case Appeal No.452 of 2009

The Commissioner of Income Tax
Chennai. ...Appellant/Appellant

Vs.

M/s.Indian Cement Ltd.,
Dhun Building,
827, Anna Salai,
Chennai - 600 009.
PAN: AAACT1728P ...Respondent/Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal Madras 'C' Bench, dated 29.08.2008 in ITA No.547/Mds/2006 for Assessment Year 1997-98 against the order passed by the Commissioner of Income Tax(Appeals) III, chennai order dated 18.11.2005 made in ITA.No.308/2005-06/A-III against the order passed by the Assistant Commissioner of Income Tax, Company Circle II(3), Chennai-34 made in G.I.No./P.A.No./000-1/AAACT172BP, dated 31.03.2005.

For Appellant : Mr.Karthik Renganathan
Senior Standing Counsel

For Respondent : Mr.R.Vijayaraghavan

J U D G M E N T

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

Both the learned counsels submit that the controversy in the present case is covered by the decision of the Coordinate Bench rendered on 05.08.2019 in T.C.A.No.117 of 2009 [Commissioner of Income Tax Vs. M/s.India Cements Ltd., Chennai - 9] for Assessment Year 1996-97.

2.The assessment year in the present appeal before us is Assessment Year 1997-98. The Coordinate Bench of this Court held as under:

> "30. Having held so, we need to consider as to whether the reassessment was validly done. The Tribunal held in favour of the assessee stating that the reassessment was bad in law. To decide this issue, we may straightaway refer to the decision in the case of Kelvinator of India Ltd., wherein the Hon'ble Supreme Court pointed out that post 01.04.1999, the power to reopen was much wider and that however, one needs to give a schematic interpretation to the words ?"reason to believe"?, failing which, Section 147 of the Act would give arbitrary powers to the Assessing Officer to reopen the assessment on the basis of ?"mere change of opinion"?, which cannot be, per se, reason to reopen. It was pointed out that there is a conceptual difference between the power to review and power to reassess, that the Assessing Officer has no power to review, that he has the power to reassess and that reassessment has to be based on fulfillment of certain pre-conditions and if the concept ?"change of opinion"? is removed, then in the garb of reopening the assessment, review would take place. It was held that the concept of "?change of opinion"? should be treated as in-built test to check the abuse of power by the Assessing Officer. Thus, it was held that after 01.04.1999, the Assessing Officer has power to reopen provided there is ?"tangible material"? to come to the conclusion that there is an escapement of income from assessment and reasons must have a live link with the formation of the belief.
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> 31. Bearing the aforementioned legal principles in mind, if we examine the facts of the present case, as rightly pointed out by the Tribunal, all particulars relating to dividends and short term capital gains and other particulars were available with the Assessing Officer during the assessment proceedings, which was concluded on 15.02.1999 under Section 143(3) of the Act. Furthermore, the Tribunal, on facts, recorded that the Department did not bring any material fact before it, which was not disclosed in the original return of income.
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> 32. Even in this appeal, no such fact has been brought to our notice nor pleaded in the memorandum of grounds of appeal and presumably that is the reason why the Revenue had raised the substantial questions involving the interpretation of Rule 27 of the Rules

and conveniently was not focusing on the issue as to whether the reopening of assessment was on account of change of opinion. A reading of the reassessment order dated 31.03.2004 will clearly reveal that all facts and figures were gathered by the Assessing Officer only from the original return of income filed by the assessee. There was no fresh or tangible material available with the Assessing Officer to reopen the proceedings. Therefore, we have no hesitation to conclude that the reopening of the assessment beyond four years was clearly a case of change of opinion. For all the above reasons, substantial questions of law No.1 to 3 are liable to be answered against the Revenue and consequently, it is held that the reopening of the reassessment is bad in law and is liable to be set aside.

33. Accordingly, the appeal filed by the Revenue is dismissed. The re-assessment order dated 31.3.2004 is set aside. Substantial questions of law No.1 to 3 are answered against the Revenue. As we have answered substantial questions of law Nos.1 to 3 against the revenue, there would be no necessity for us to answer the substantial question of law No.4 and the said question is left open. No costs."

3.In terms of the aforesaid agreed submission made at the Bar by the learned counsels, we dispose of the present Appeal in same terms. There shall be no order as to costs.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

Sgl
To

1.The Registrar
Income Tax Appellate Tribunal
'C' Bench, Madras.

2.The Commissioner
Income TAx(Appeals) III
Chennai

3.The Assistant Commissioner of Income Tax
Company Circle II(CS)
Chennai-34

+1 cc to Karthik Ranganathan Advocate sr19100
+1 cc to M/s.Subbaraya Aiyar Padmanabhan Advocate sr19615

T.C.A No.452 of 2009

aa05/06/2020