IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.12.2020

CORAM

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

Tax Case (Appeal) No.129 of 2013

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

Vs.

Lakshmi Vilas Bank Ltd
Salem Road, Kathaparai, Karur. ... Respondent /Appellant

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal 'D' Bench, Chennai dated 09.03.2012 in MP.No. 151/MDS/2006 in ITA No.681/Mds/2003 and against the order passed by the Commissioner of Income Tax (Appeals) Tiruchirapalli, made in ITA.No. 147/2002-03, dated 24/02/2003 and against the order passed by the Assistant Commissioner of Income Tax, Company Circle - I, Tiruchirapalli, made in PAN/GIR.No. 109-T/101 CT 19 dated 28/03/2002 for Assessment year 1995-1996.

For Appellant : Mr.M.Swaminathan, Senior Standing Counsel assisted by Ms.V.Pushpa, Junior Standing Counsel

For Respondent: Mr.R.Venkat Narayanan for M/s.Subbaraya Iyer Padmanabhan

J U D G M E N T

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

This Tax Case Appeal has been filed by the Revenue aggrieved by the order dated 09.03.2012, whereby the learned Tribunal held that for Assessment Year 1995-96 in question, there was no failure on the part of the Assessee and therefore the proviso to Section 147 of the Act could not be invoked by the Assessing Authority for reassessment for the Assessment Year 1995-96 and therefore the reopening was not justified.

2. The relevant extract from the order of the learned Tribunal is quoted below for ready reference.

> "6. We have perused the orders and heard the rival submissions. The reasons for reopening are not available on record for assessment year 1992-93. Ground assailing the reopening was also not taken by the assessee before ld. CIT (Appeals). Nevertheless, this being jurisdictional aspect, we are of the opinion that assessee can raise the issue during appellate proceedings as well. Since facts are to be verified for ascertaining the kind of disclosure made by the assessee during the course of original assessment proceedings and consideration thereof by the Assessing Officer, and such facts including the date of issue of notice under Section 148 are not available, we are of the opinion that the matter has to go back to ld.CIT (Appeals) for adjudication. However, for assessment year 1995-96, ld.CIT(Appeals) himself has noted that assessee had made the relevant claims in the statements filed by it before ld.A.O. Ld CIT(Appeals) has taken an assumption that Assessing Officer had not applied his mind on various information furnished by the assessee during the course of original assessment proceedings. It is to be noted that re-assessment proceedings for assessment year 1995-96 was initiated after four years from the end of that year and hence proviso to Section 147 of the Act applied. In such a situation, re-assessment proceedings which were initiated merely based on change of opinion on various claims made by the assessee cannot be upheld. Hon'ble Apex Court in the case of CIT Vs. Kelvinator of India Ltd (320 ITR 561), has held that a reopening done after the end of four years from the impugned assessment year cannot be held as valid unless tangible material was available justifying such reopening. We are, therefore of the opinion that ground of the assessee questioning the reopening has to succeed for assessment year 1995-96, whereas, such ground taken by the assessee for 1992-93 has to be remitted to ld.CIT(Appeals) for consideration after collecting necessary facts for adjudication."

3. Having heard the learned counsel for the parties, we are satisfied that unless the failure on the part of the Assessee is pointed out by the Revenue Authority concerned, the extended period of limitation beyond four years from the end of the Assessment Year, in our opinion, cannot be invoked. No such failure on the part of the Assessee has been pointed out in the

present case and therefore, while passing the orders on the miscellaneous petition, upon remand by this Court, the learned Tribunal has held that the reassessment initiated after a period of four years was beyond limitation as far as the Assessment Year 1995-96 was concerned and therefore, we do not find any question of law to be arising in the present appeal.

4. The appeal filed by the Revenue is liable to be dismissed and it is accordingly dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

KST

To

1.Income Tax Appellate Tribunal
'D' Bench,Chennai.

2.The Commissioner of Income Tax,
Chennai.

3. The Commissioner of Income Tax (Appeals),
Tiruchirapalli.

4.The Assistant Commissioner of Income Tax,
Company Circle I, Tiruchirapalli.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No. 39167
+1cc to Mr.Subbaraya Aiyar, Advocate, S.R.No. 39486

T.C.(A) No.129 of 2013

CA(CO)
GN(18/01/2021)