

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

INCOME TAX APPEAL NO.1858 OF 2017

Pr. Commissioner of Income Tax-15, Mumbai
Aaykar Bhavan, M. K. Road,
Mumbai

...Appellant

vs.

EPC Industries Ltd.
Plot No. H-109, MIDC, Ambad,
Nashik-422 010

...Respondent

Mr. Akhileshwar Sharma for Appellant.

Mr. Vipul B. Joshi a/w. Ms. Dinkle H. Hariya i/b Ms. Namrata S.
Kasale for the Respondent.

**CORAM : K. R. SHRIRAM AND
AMIT B. BORKAR, JJ.**

DATE : 26 OCTOBER 2021

ORAL JUDGMENT: (Per Amit B. Borkar, J.)

This appeal under Section 268A of the Income Tax Act, 1961 (the Act) challenges the order dated 10/2/2017 passed by Income Tax Appellate Tribunal (ITAT). The subject matter of the Appeal is the Assessment Year 2007-2008.

2. The Revenue urges the following questions of law for our consideration:

A. Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT was right in holding that the reassessment made under section 143 read with section 147 of the Act was bad in law and reopening was only on

account of mere change of opinion when there was no discussion on the issue in the original assessment order ?

B. Whether on the facts and circumstances of the case, and in law the Hon'ble ITAT was right in holding that the reassessment made under Section 143 read with Section 147 of the Act was bad in law and reopening was only on account of mere change of opinion when there is new information in the form of audit objection in the light of the principles laid down by the Supreme Court in Larsen & Toubro Ltd. vs. State of Jharkhand and Ors. Civil Appeal No.5390/2007 ?

C. Whether on the facts and circumstances of the case, and in law the Hon'ble ITAT was right in holding that the reassessment made under Section 143 read with Section 147 of the Income tax Act, 1961, was bad in law and reopening was only on account of mere change of opinion without deciding the issue on the merits of the case ?

3. The assessee company is engaged in the business of manufacturing of HDPE pipes, fittings and sprinkler system. The return of income has been filed on 31/10/2007 declaring nil income. Assessment under Section 143(3) of the Act came to be completed determining the income at Rs.1,28,19,120/- before set off of brought forward business losses and nil income after set off of brought

forward business losses. Assessment was completed under Section 143(3) of the Act on 30/11/2009.

4. On 29/3/2012 Assessing Officer issued notice for reopening of assessment by giving following reasons for reopening of assessment.

“The assessee had claimed deduction of Rs.30,07,71,569/- for waiver of loan on account of One Time Settlement (OTS) with banks and NCD holders. The amount was credited to the P & L Account as income but claimed as deduction in the statement of computation of income. The assessee had claimed deduction for depreciation on the assets acquired with the said loan, banks claimed the write-off of the loan on OTS as bad debts and the writ back by assessee was to be treated as income. Therefore, I have reasons to believe that income to the extent of Rs.30.07 crores has escaped assessment within the meaning of Section 147 of the Act.”

5. The assessee by letter dated 1/1/2013 submitted its objections to the reopening of assessment stating that there is no escapement of income by the assessee and it had furnished all the information in the course of assessment proceedings in respect of waiver of loan by the bank on One Time Settlement as required by the Assessing Officer and therefore reopening of assessment was merely a change of opinion and there was no tangible material which justified Assessing Officer to reopen the assessment.

6. Assessing Officer rejected the objections of the assessee by order dated 8/1/2013 and completed reassessment under Section

143(3) on 22/3/2013 bringing to tax the waiver of principal amount of loan of Rs.30,07,71,569/- as income of the assessee under Section 41(1)/28(iv) of the Act. Being aggrieved by order dated 23/3/2013 assessee preferred appeal before the Commissioner of Income Tax (Appeal) Mumbai being CIT(A)-22/ACIT(OSD)-10(3)/IT-154/2013-14 which was dismissed by order dated 29/2/2016.

7. Assessee being aggrieved by order dated 29/2/2016 passed by CIT(A) filed appeal bearing ITA No.3210/Mum/2016 which is allowed by ITAT holding that the assessment was reopened based on information which was already on record and no new tangible material was brought on record to suggest escapement of income in respect of waiver of loan on One Time Settlement by banks which was claimed by assessee as deduction. ITAT further observed that in the course of original assessment proceedings, Assessing Officer had called for details in respect of waiver of loan on account of One time Settlement with banks and NCD holders and the assessee had filed detailed submission as to why principal amount which was waived by the Bank on One Time Settlement was not taxable.

8. Mr. Sharma, learned counsel appearing for the Revenue submitted that the issue of deduction of waiver of loan by banks as One Time Settlement finds no mention in the original assessment order passed under Section 143 (3) of the Act. Thus no opinion was formed by the Assessing Officer while passing original assessment order. Therefore there was no bar in issuing notice for reopening of

assessment. He therefore submitted that the substantial questions of law as proposed arise for consideration in the present appeal.

9. It is now well settled that the power of Assessing Officer to reopen the assessment is not subject to the limitation provided in Section 147 of the Act viz., failure on the part of assessee to truly and fully disclose all material facts necessary for assessment. In the result even where the assessee had disclosed all facts fully and truly for the purpose of assessment, the Assessing Officer will have jurisdiction to reopen the reassessment, if he has reason to believe that income chargeable to tax has escaped the assessment. However, this reason to believe that any income chargeable to tax had escaped assessment within 4 years from the end of the relevant Assessment-Year has to arise not on account of mere change of opinion but on the basis of some tangible material. (*Commissioner of Income Tax vs. Kelvinator of India Limited*)¹

10. In the facts of the present appeal a query was raised by the Assessing Officer in original assessment in respect of waiver of loan on account of One Time Settlement with the banks and assessee had filed detailed submission as to why principal amount was waived by the bank on account of One Time Settlement is not taxable. Once there was query raised with regard to a particular issue during regular assessment proceedings it must follow that the Assessing Officer had applied his mind and taken a view in the matter as reflected in the

¹(2010) 320 ITR 561 (SC)

assessment order. (*Aroni Commercials Ltd. vs. Assistant Commissioner of Income Tax*)²

11. The Division Bench of this Court in the case of *Marico Ltd. vs. Assistant Commissioner of Income -tax 12(3)(2)* ³ had occasion to deal with similar submission made by the Revenue. This Court in paragraph 11 held as under:

"11. Therefore, it must follow that where queries have been raised during the assessment proceedings and the assessee has responded to the same, then the non-discussion of the same or non-rejection of the response of the assessee, would necessarily mean that the Assessing Officer has formed an opinion accepting the view of the Assessee, Thus an opinion is formed during the regular Assessment proceedings, bars the Assessing Officer to reopen the same only on account of a different view."

12. The pronouncement of the co-ordinate Bench of this Court on similar issue is binding on us. The appellant has not made out a case to take a different view in the matter. We are therefore satisfied that no substantial question of law arise in the present appeal.

13. Appeal is therefore dismissed.

(AMIT B. BORKAR, J)

(K. R. SHRIRAM, J.)

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SUBODH
KARVE

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2 (2014) 362 ITR 403 (Bom)

3 (2019) 111 Taxmann.com 253 (Bombay)