IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

CORAM :

THE HONOURABLE MR.JUSTICE R. MAHADEVAN
AND
THE HONOURABLE MR.JUSTICE J.SATHYA NARAYANA PRASAD

T.C.A.NO.1437 OF 2010

Commissioner of Income Tax - I
Tiruchirapalli. .. Appellant

Versus

M/s.Trichy Steel Rolling Mills Ltd.,
P.B.No.603,
Senthannipuram,
Tiruchirapalli - 620 004.
.. Respondent

Appeal preferred under Section 260A of the Income Tax Act, 1961, against the order of the Income Tax Appellate Tribunal, Chennai, “B” Bench, dated 30.04.2010 in I.TA.No.1569/Mds/2008 for the assessment year 1998-1999.

Against the Appellate Order and ground of Decision passed by the Commissioner of Income Tax (A) No.4, Williams Road Contonment, Tiruchirapalli 620 001 dated 21.05.2008 made in ITA.No.584/2005-2006, for the Assessment year 1998-1999 against the Assessment order passed by the Deputy Commissioner of Income Tax, Company Circle-1, Tiruchirapalli, dated 27.01.2006 made in PAN/GIR AAACT3372K for the Assessment year 1998-1999.

For Appellant : Mrs. V. Pushpa,
Junior Standing Counsel

For Respondent : Mr. Kaushik M
for Mr.S.Sridhar

J U D G M E N T

(Judgment of the Court was delivered by R.MAHADEVAN, J.)

This tax case appeal has been filed by the appellant / Revenue, challenging the order dated 30.04.2010 passed by the Income Tax Appellate Tribunal, Bench 'B', Chennai, in I.T.A.No.1569/Mds/2008, relating to the assessment years 1998-99.

2. On 07.02.2011, this court admitted this tax case appeal by raising the following substantial question of law:-

> "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the reopening of the assessment for the Assessment Year 1998-99 was bad in law on the ground that there was no fresh material that came to the notice of the Assessing Officer, without appreciating that the assessee had not disclosed fully and truly the material facts necessary for the completion of the assessment for the Assessment Year 1998-99 and had wrongly claimed expenditure/ loss pertaining to the period subsequent to the close of the relevant accounting year?"

3. The assessee is a manufacture of steel rods, steel bars etc., For the assessment year 1998-1999, they have submitted their return of income and the assessment was completed on 17.01.2001 under Section 143 (3) of The Income Tax Act (in short the Act) determining a loss of Rs.3,60,69,466/. However, even before the completion of the assessment, the assessee approached the Appellate Authority namely Commissioner of Income Tax (Appeals). The appellate authority enhanced the loss from Rs.3,60,69,466/- to Rs.3,67,54,764/-. The order passed by the Appellate Authority was also given effect to by the Assessing Officer by re-computing the total loss at Rs.3,67,54,764/- and the assessment was closed.

4. After completion of the assessment proceedings for the assessment year 1998-1999 on 17.01.2001, the Assessing Officer noticed that the assessee was erroneously allowed a deduction of Rs.94,86,333/- towards bad debts and it requires a re-assessment. Accordingly, the assessing officer initiated proceedings under Section 147 of the Act and issued a notice for re-assessment on 09.09.2005. In response, the assessee has submitted their response opposing the initiation of proceedings under Section 147 of the Act without any tangible material evidence to do so. Notwithstanding such opposition on the part of the assessee, the Assessing Officer, by an order dated 27.01.2006, concluded the re-assessment proceedings disallowing loss towards bad debts at Rs.94,88,333/-.

5. Aggrieved by the same, the assessee has filed an appeal before the Commissioner of Income Tax (Appeals) in ITA No. 584 of 2005-2006. The appellate authority, by an order dated 21.05.2008, dismissed the appeal. Therefore, the assessee has filed a further appeal to the Tribunal. The Tribunal, by the order dated 30th April 2010, set aside the order passed by the Appellate

Authority, confirming the order of the assessing officer. The order passed by the Tribunal reads as under:-

> "3. Before us, a legal plea has been raised by way of additional ground that the already completed assessment under Section 143 (3) of the Act has been re-opened in this case after a lapse of four years although the conditions mentioned in Section 147 are not satisfied. Therefore, the re-assessment proceedings become invalid and consequently, the re-assessment itself becomes invalid. Since this additional ground is purely a legal ground requiring no further investigation of facts, we are admitting the same. This ground being of utmost importance and going to the very root of the matter, first of all, because we were convinced that after a lapse of four years, without there being any fresh material coming to the notice of the assessing officer, action under section 147 cannot be initiated, in view of the decision of the Honourable Apex Court in Civil Appeal Nos. 2009-2011 of 2003 with Civil Appeal No. 2520 of 2008 int he case of CIT vs. M/s. Kelvinator of India Limited. It was found for a fact that no fresh material was either found by the Assessing Officer or was brought on the record and whatever decision was taken on the basis of available records at the time of original assessment only these materials were available before him during re-assessment proceedings as well. Any change of opinion, which is not permitted in law, particularly after a lapse of four years from the date of original assessment. Undeniably, the notice for re-assessment was issued after a lapse of four years to the assessee and there being no fresh material in his possession, he is debarred from initiating re-assessment proceedings. Consequently, we hold that the re-assessment proceedings are null and void ab initio. Accordingly, the re-assessment order itself becomes non actionable and, therefore, we quash the same. As a result, the assessee succeeds on this legal issue. Having decided the legal issue as above, there is no need to address the issues raised on merits."

6. The learned counsel appearing for the revenue would vehemently contend that there was failure on the part of the assessee in truly and fully disclosing the material particulars relating to the assessment in question which necessitated the Assessing Officer to re-open the assessment. The Tribunal did not take note of the fact that there was a dispute between the Assessee Company and M/s. Shree Aravindh Steel Limited with

respect to non-payment of a sum of Rs.45.97 lakhs by the assessee company towards purchases made by them. Therefore, M/s. Shree Aravindh Steel Limited has filed a suit before this Court and during the pendency of the litigation, a Memorandum of Understanding was entered into between the Assessee and M/s. Shree Aravindh Steel Private Limited and based on the same, the case filed by M/s. Shree Aravindh Steel Limited was dismissed by this Court. At the time of completion of the assessment proceedings, the assessee has suppressed the dispute with M/s. Shree Aravindh Steel Limited over non-payment of Rs.45.97 lakhs. Subsequently, the Memorandum of Understanding was entered into on 04.06.1998 much before the completion of assessment, therefore, the Assessing Officer is wholly justified in re-opening the assessment under Section 147 of the Act. The learned counsel for the appellant therefore prayed for allowing this appeal by setting aside the order of the Tribunal.

7. On the above contentions putforth by the learned counsel for the revenue, we have heard the learned counsel for the respondent-assessee and perused the materials placed on record.

8. The only point arise for consideration in this appeal is whether the Assessing Officer is entitled to re-open the assessment under Section 147 of the Act. In this context, the Honourable Supreme Court has considered the various parameters required for re-opening a concluded assessment under Section 147 of the Act in the case of (Commissioner of Income Tax, Delhi vs. Kelvinator of India Limited) reported in (2010) 187 Taxman 312 (SC) wherein it has been observed as under:-

> "4. On going through the changes, quoted above, made to section 147 of the Act, we find that prior to Direct Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfilment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in Section 147 of the Act (with effect from 01-04-1989), they are given a go-by and only one condition has remained viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. Therefore, post 01-04-1989, power to reopen is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen. We must also keep in mind the conceptual difference between

power to review and power to re-assess. The Assessing Officer has certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 01-04-1989, Assessing Officer has power to reopen, provided, there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a link with the formation of the belief. Our view gets support from the changes made to section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the Companies against the omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the words "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote hereinbelow the relevant portion of Circular No.549, dated 31-10-1989, which reads as follows:-

"7.2. Amendment made by the Amending Act, 1989 to reintroduce the expression "reason to believe" in Section 147.- A number of representations were received against the omission the words "reason to believe" from Section 147 and their substitution of the 'opinion' of the Assessing Officer. It was pointed out that the meaning of the expression 'reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from section 147 would give arbitrary powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Acct, 1989, has again amended Section 147 to reintroduce the expression 'has reason to believe' in place of the words "for reasons to be recorded by him in writing, is of the opinion". Other provisions of the new section 147, however, remain the same"

5. For the aforesaid reasons, we see no merit in these civil appeals filed by the Department, hence, dismissed with no order as to costs."

8. Applying the judgment of the Honourable Supreme Court in the above case, which was also relied on by the Tribunal, the assessment proceedings initiated under Section 143 (3) of the Act

was completed on 17.01.2001. Thereafter, the Assessing Officer issued a notice dated 09.09.2005 for re-assessment on the ground that certain income, which are liable for payment of tax, has escaped the assessment and it warrants re-assessment. In the re-assessment order, it was merely stated that "it was noticed that the assessee was allowed a deduction of Rs.94,86,333/- as bad debts, wrongly. The assessment was therefore re-opened under Section 147. This would stand testimony to the fact that the Assessing Officer has no tangible material evidence to initiate the re-assessment proceedings. Had there been any material evidence, which prompted the assessing officer to initiate re-assessment proceedings, he ought to have atleast indicated it in the order of re-assessment proceedings. But the re-assessment proceedings was concluded only on the basis of the explanation offered by the assessee with respect to the suit filed against them before this Court and the Memorandum of Understanding entered into with M/s. Shree Aravindh Steel Private Limited. Therefore, it is evident that the re-assessment proceedings have been initiated without any tangible material evidence, unearthed subsequently, which the assessee did not produce at the time of original assessment under Section 143 (3) of the Act. Thus, based on a change of opinion on the part of the Assessing Officer, the re-assessment proceedings were initiated. The Tribunal also held that there was no fresh material in the possession of the Assessing Officer warranting initiation of re-assessment proceedings under Section 147 of the Act. In such view of the matter, we are of the view that the Tribunal is right in allowing the appeal filed by the assessee and it does not call for any interference by this Court.

In the light of our above conclusion, the substantial question of law is answered against the revenue and in favour of the assessee. The Tax Case Appeal is dismissed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gba/rsh

To

1. The Commissioner of Income Tax - I
Tiruchirapalli 620 001.

2. The Income Tax Appellate Tribunal,
   Chennai, "B" Bench, Chennai.

3. The Deputy Commissioner of Income Tax,
   Company Circle-1, Tiruchirapalli.

+1cc to Mr.M.Swaminathan, Advocate, S.R.No.9485

TCA No.1437 of 2010

EV(CO)
PM/28/02/2022