

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, CHENNAI

श्री बी.आर.बास्करन, लेखा सदस्य  
एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

**BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER  
AND SHRI VIKAS AWASTHY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 2631/Mds/2014

निर्धारण वर्ष /Assessment Year : 2007-08

The Income-tax Officer,  
Business Ward-IV(2),  
Chennai-34.

(अपीलार्थी/Appellant)

v. M/s. Murugan Arul Enterprises,  
No.14, Raghuraman Street,  
Arumbakkam, Chennai -106.  
PAN AAGFM7953C

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर /Appellant by : Shri P. Radhakrishnan, JCIT  
प्रत्यर्थी की ओर से/Respondent by : Dr. C.P.Ramaswami, Advocate

सुनवाई की तारीख/Date of Hearing : 03.02.2015

घोषणा की तारीख/Date of Pronouncement: 10.04.2015

### **आदेश /O R D E R**

**PER VIKAS AWASTHY, JUDICIAL MEMBER**

The appeal has been filed by the Revenue against the order of the Commissioner of Income-tax(Appeals)-V, Chennai dated 08.07.2014 for the assessment year 2007-08.

The only issue raised by the Revenue in this appeal is annulling of reassessment proceedings by the Commissioner of Income-tax(Appeals).

2. This is second round of litigation before the Tribunal in the case of the assessee. Earlier, the Revenue had filed the appeal before the Tribunal and the assessee had filed cross-objection against the order of the Commissioner of Income-tax(Appeals). The assessment order was passed under Section 143(3) read with Sec.147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act'). The assessee did not raise the issue of reopening either before the Assessing Officer or before the Commissioner of Income-tax(Appeals). The issue was first time raised before the Tribunal. The Co-ordinate Bench of the Tribunal set aside the order of the Commissioner of Income-tax(Appeals) and remitted the matter back to the Commissioner of Income-tax(Appeals) to decide the issue of reopening as per the ratio laid down by the Hon'ble Delhi High Court in the case of CIT v. Orient Craft Ltd., reported as 354 ITR 536 and the decision of the Hon'ble Supreme Court in the case of ACIT v. Rajesh Jhaveri Stock Brokers Pvt. Ltd., reported as 291 ITR 500 and the

decision of the Hon'ble Madras High Court in the case of CIT v. Idea; Garden Complex P. Ltd., reported as 340 ITR 609. Consequent to the directions of the Tribunal, the Commissioner of Income-tax(Appeals) passed the order, impugned in the present appeal.

3. The assessee filed its return of income for the assessment year 2007-08 declaring income of ₹ 99,233/-. The return of the assessee was processed u/s.143(1) of the Act. Subsequently, notice u/s.148 was issued to verify as to whether tax deduction at source was made for job work charges as required u/s.40(a)(ia) of the Act. The Assessing Officer vide order dated 28.12.2011, made additions on the following items:

- (i) Suppression of labour charges receipts ₹14,94,026/-
- (ii) Excess expenses claimed (expenses added back)
  - Loose tools and consumable – ₹5,00,000
  - Job work charges paid – ₹2,00,000
  - Freight charge paid – ₹2,00,000
  - Maintenance and service charges – ₹5,00,000
  - Water and oil expenses – ₹1,00,000

With the above additions, gross profit was re-worked.

Aggrieved by the assessment order dated 28.12.2011 passed u/s. 143(3) read with Sec.147, the assessee preferred an appeal before the Commissioner of Income-tax(Appeals). The Commissioner of Income-tax(Appeals) held that reopening is bad in law and void ab initio. Aggrieved by the finding of the Commissioner of Income-tax(Appeals), the Revenue has come in appeal before the Tribunal.

4. Shri P. Radhakrishnan, representing the Department, vehemently supported the findings of the Assessing Officer and reiterated the grounds raised in the appeal.

5. On the other hand, Dr. C.P.Ramaswami, appearing on behalf of the assessee, submitted that reassessment proceedings were initiated only for verification purpose. The Assessing Officer had no additional material to form an opinion that the income chargeable to tax had escaped assessment. The Id. Counsel for the assessee further submitted that the reason for which reassessment proceedings were initiated, no addition was made thereon. In support of his submission, the Id. Counsel for the assessee placed reliance on the judgment of the Hon'ble Delhi High Court in the case of Orient Craft Ltd.(supra).

6. We have heard the submissions made by the representatives of both the sides and have perused the orders of the authorities below. A perusal of the assessment order shows that reopening proceedings were initiated to verify whether the tax at source was made for job work charges as required u/s. 40(a)(ia) of the Act? In the present case, no addition was made in respect of the reasons given for initiating reassessment proceedings.

It is a well settled law that during the assessment proceedings, the Assessing Officer has power to assess other incomes 'as well' that have escaped assessment and not referred to in the notice for reassessment. But the Assessing Officer cannot make additions on the other incomes alone, if no addition is made for which reassessment proceedings were initiated. The Hon'ble Bombay High Court in the case of CIT vs. Jet Airways (I) Ltd. reported as 331 ITR 236 has elaborately explained the provisions of the Act, in this regard. The judgment rendered in the case of Jet Airways (I) Ltd.(supra) has been subsequently followed by the Hon'ble Delhi High Court in the

case of Ranbaxy Laboratories Ltd. v. CIT, reported as 60 DTR 77.

7. The Commissioner of Income-tax(Appeals) while accepting the contentions of the assessee for annulling the reopening proceedings has given the findings as under :

*"In the assessment order, the Assessing Officer has not extracted the reasons for reopening the assessment. However, the Assessing Officer has reopened by issuing a notice u/s.148 within 4 years from the date of filing of return after the same was being processed u/s.143(1) of the IT Act. The only reason for reopening the assessment for the Assessing Officer appeared to verify whether the TDS was made for the job works done as required u/s.40(a)(ia). Whereas the appellant has received job work in the form of labour charges as per the books of accounts to the extent of Rs.1,00,13,313/-. The question of deducting TDS on the labour charges received by the appellant does not arise as no payment has been made on any contractual obligation to any outside parties and ultimately the Assessing Officer has not made any addition on this ground which was the main reason for reopening the assessment proceedings reopening u/s.148. The AR of the appellant in his submissions has vehemently objected that the assumption of jurisdiction in the case of the appellant is absolutely unwarranted, bad in law and void ab initio. Since no addition was made by the Assessing Officer in his reassessment proceedings on the reason of non-deduction of tax at source on the job charges, because the appellant only received job work charges and there was no liability on the part of the appellant to deduct tax at source. I am in*

*agreement with the arguments put forward by the AR of the appellant that in the absence of any new material the Assessing Officer is not empowered to reopening the assessment. Once there was no fresh tangible material with the Assessing Officer to establish that the appellant can be said to have failed to disclose fully and truly all material facts, the Assessing Officer is not empowered to reopen the assessment irrespective of whether it is made u/s.143(1) or 143(3). The order of reassessment was not valid. The same view was held by the Hon'ble jurisdictional Madras High Court in the case of Bapalan and Co. Exports vs JCIT (OSD) (2007) 289 ITR 37. Further Section 147 does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceedings upon a mere change of opinion. This view was taken by the Full Bench of the Hon'ble Delhi High Court in the case of Kelvinator of India Ltd Vs. CIT (2002) 256 ITR 1(Del). The above ratio laid down by the Delhi High Court was further upheld by the Hon'ble Supreme Court in the same case as reported in 320 ITR 561, holding that the Assessing Officer has no powers of review and that assessment cannot be reopened on mere change of opinion without any fresh tangible material on record. Similarly, the Hon'ble Delhi High Court held in the case of Orient Craft Ltd, (2013) 354 ITR 536 wherein it was held that the reasons disclosed that the Assessing Officer reached the belief that there was escapement of income on going through the return of income filed by the assessee after he accepted the return u/s 143(1) without scrutiny, and nothing more. This was nothing but review of the earlier proceedings and abuse of power by the Assessing Officer. Since there was nothing in the reasons recorded to show that any tangible material had come to the possession of Assessing Officer subsequent to the issue of intimation, the notice reflected an arbitrary exercise of the power conferred u/s.147. The ratio*

*held by the Hon'ble Delhi High Court in the case is squarely applicable to the facts of the appellant case under consideration."*

We are of the view that the First Appellate Authority has given reasoned findings in allowing the appeal of the assessee. We concur with the same.

In view of the above, we do not find any merit in the appeal of the Revenue and the same is dismissed.

Order pronounced on Friday, the 10<sup>th</sup> of April, 2015 at Chennai.

Sd/-  
(बी.आर.बास्करन)  
(B.R.Baskaran)

लेखा सदस्य/Accountant Member

sd/-  
(विकास अवस्थी)  
(Vikas Awasthy)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,  
दिनांक/Dated, the 10<sup>th</sup> April, 2015.  
Mpo/Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.