



आयकर अपीलिय अधिकरण "ए" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI**

श्री राजेंद्र, लेखा सदस्य एवं

श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष ।

**BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. : 1064/Mum/2014

(Assessment year: 2005-06)

ADIT(IT)-1(1), R. No.117, 1 st Floor, Ballaro Estate, N M Rd., Mumbai -400 038	Vs	अमेरिकन एक्सप्रेस बैंक लिमिटेड M/s American Express Bank Ltd., C/o SRBC and Associates, 6 th Floor, Express Towers, Nariman Point, Mumbai -400 021 स्थयी लेखा सं. PAN: AABCA 0588 K
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	श्री एम मुरली Shri M Murli
Respondent by	:	श्री निशांत ठक्कर और मिस जैस्मिन अमलसदवाला Shri Nishant Thakkar & Ms Jasmin Amalsadwala

सुनवाई की तारीख /Date of Hearing : 09-03-2016

घोषणा की तारीख /Date of Pronouncement : 31-05-2016

आदेश

ORDER

श्री अमित शुक्ला, न्या सः

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the revenue against direction/order dated 18.03.2013 given by the Dispute Resolution Panel –I, Mumbai (DRP) under section 144C(5) for the assessment year 2005-06. In various

grounds of appeal, the Department has mainly challenged the direction of DRP for quashing of the reassessment proceedings under section 147 on various grounds.

2. The brief facts qua the validity of reassessment proceedings are that, the assessee has filed its return of income for the AY 2005-06, declaring total loss of Rs.81,11,225/- and has paid the taxes under the MAT provision on a book profit of Rs.36,53,41,359/- under section 115JB. The said return of income was selected for scrutiny and assessment was completed under section 143(3) and the book profit disclosed under section 115JB was accepted by the AO without modification, vide order dated 11.12.2008. Later on, after the expiry of 4 years from the end of the relevant assessment year, the assessee's case was reopened u/s 147 by issuance of notice under section 148 dated 27th March, 2012,, on the following "reasons recorded":-

"The Income-tax Act 1961 has been amended by Finance (No.2) Act, 2009 and clause (i) being the amount or amounts set aside as provision for diminution in the value of any asset' was inserted in the explanation 1 of section 115JB w.r.e.f. 01/04/2001. In the assessee's case the following amounts are shown debited in Profit & Loss account which are provision for diminution in the value of assets:

1)	<i>Depreciation in the value of securities</i>	<i>Rs 20,94,95,000/-</i>
2)	<i>Provision for doubtful advances and receivables</i>	<i><u>Rs 37,91,34,000/-</u></i>
	<i>Total</i>	<i>Rs 58,86,29,000/-</i>

The above amounts have not been added to the income of the assessee while computing income u/s 115JB of the IT Act, 1961. Thus the income of Rs 58,86,29,000/- @7.5% has escaped from assessment. Hence, I have

reason to believe that the income has escaped assessment within the meaning of para (c) of the Explanation 2 below section 147 of the Act."

The said reopening of assessment was beyond the period of 4 years from the end of the relevant assessment year and was thus clearly hit by the *Proviso* to section 147, wherein there is an embargo to reopen the assessments completed u/s143(3) after such time, unless conditions prescribed therein are satisfied. The AO rejected the assessee's objection on reopening and held that, he is not reassessing the income but recalculated the profit of the assessee as per section 115JB which has been amended by Finance Act 2009 retrospectively from 01.04.2001 and, therefore, the provision of diminution of value of the asset, that is, depreciation in value of securities and provision for doubtful advances and receivables have to be disallowed and added back to the book profit. The AO strongly relied upon the decision of Delhi High Court in the case of Whirlpool of India vs. UOI, reported in [2013] 31 taxman.com 200. Accordingly, he added the said amount in the computation of book profit.

3. Before the DRP, the assessee's has challenged the validity of reopening on the ground that the Legislative amendment came much after the filing of return of income and post completion of assessment with retrospective effect, hence it cannot be held that *there was failure on the part of the assessee to disclose fully and truly all material facts relevant for the assessment,*

which is a condition precedent for reopening the case under *proviso*. In support, reliance was placed on the decision of Jurisdictional High Court in the case of CIT v. K Mohan & Co. in ITA No. 1263 of 2011 and 2347 of 2010 wherein, their Lordships held that legislative amendment brought with retrospective effect cannot be the ground for the reopening the assessment completed under section 143(3) after the expiry of period of 4 years. The DRP, relying upon the decision of Hon'ble jurisdictional High Court, quashed the reassessment proceedings.

4. We have heard the rival contention made by the parties before us and also perused the relevant material placed on record. Here in this case, assessment was completed under section 143(3) accepting book profit computed by the assessee under section 115JB vide order dated 11.12.2008. Now, after the expiry of 4 years from the end of the relevant assessment year, the assessee's case has been sought to be reopened on a ground that by the Finance Act, 2009 retrospective amendment has been brought whereby depreciation on valuation of securities and provision for doubtful advances receivables have to be added back. Such a reopening after the expiry of 4 years on the ground of retrospective legislation cannot be upheld in law for the reason that, *firstly*, the primary condition under the *Proviso* to section 147 is that, no action for reopening can

be done unless any income chargeable to tax escaping assessment is by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment, which here in this case admittedly, there is no failure on the part of the assessee to disclose such fully and truly all material facts and even the AO has not ascribed any failure on the assessee. The time limit provided under the *Proviso* is absolute and, therefore, reopening beyond the 4 years cannot be upheld; *Secondly*, the Ld DRP has followed the decision of Hon'ble Bombay High Court in the case of CIT vs. Mohan & Co. (*supra*) for quashing the reassessment proceedings, wherein on similar reopening on retrospective amendments was held to be invalid. The relevant observation of the DRP reads as under:-

“Based on the above, we are of the view that that the conditions laid down to attract the provisions of section 147 of the Act are not fulfilled for reopening the assessment. We find that the assessment for AY 2005-06 was completed under Section 143(3) of the Act and an order dated 11 December 2008 was issued to Amex. The notice under section 148 of the Act seeking to reopen the assessment was issued on 27 March 2012. Thus, the notice under Section 148 of the Act seeking to reopen the assessment for the assessment year was issued after the expiry of four years from the end of the relevant assessment year i.e. beyond the period of limitation envisaged in the first proviso to section 147 of the Act, which in the instant case has expired on 31 March 2010. Further, on perusal of the reasons for reopening, we find that there is

nothing to suggest that there was failure on the part of the assessee to disclose fully and truly all the material facts necessary for his assessment, for that assessment year. We find that the decision of judicial High Court in the case of K Mohan & Co (supra) is squarely applicable to the facts of the case, in favour of the assessee. Thus, we uphold the objection of the assessee regarding initiation of the reassessment proceedings after the expiry of 4 years from the end of the relevant assessment year”.

Since the aforesaid direction of the DRP is inconformity with the provisions of the law and also with the decision of the Hon’ble High Court therefore, we do not find any merits in the grounds raised by the revenue, accordingly, same are treated as dismissed.

5. In the result, appeal of the revenue stands dismissed.

Order pronounced in the open court on 31st May, 2016

Sd/-
(राजेंद्र)
लेखा सदस्य
(RAJENDRA)
ACCOUNTANT MEMBER

Sd/-
(अमित शुक्ला)
न्याईक सदस्य
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, Date: 31st May, 2016

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
- 2) प्रत्यर्थी /The Respondent.
- 3) The DRP(TP)/CIT(A) –26, Mumbai.

- 4) The CIT/DRP Concerned-_____, Mumbai.
 - 5) विभागीय प्रतिनिधि "ए", आयकर अपीलीय अधिकरण, मुंबई/
The D.R. "A" Bench, Mumbai.
 - 6) गार्ड फाईल \
- Copy to Guard File.

आदेशानुसार/By Order

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उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, मुंबई
Dy./Asstt. Registrar
I.T.A.T., Mumbai

*चव्हान व.नि.स

*Chavan, Sr.PS