

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री ए. मोहन अलंकामणी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI A. MOHAN ALANKAMONY, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1750/Mds/2013

निर्धारण वर्ष / Assessment Year : 2005-06

The Deputy Commissioner of
Income Tax,
Company Circle V(2),
Chennai - 600 034.

v. M/s Pradeep Stainless Steel India
Pvt. Ltd.,
C-3, Phase II, Main Road, MEPZ,
Tambaram,
Chennai - 600 045.

(अपीलार्थी/Appellant)

PAN : AADCP 2554 Q

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri A.V. Sreekanth, JCIT

प्रत्यर्थी की ओर से/Respondent by : Sh. A.S. Sriraman, Advocate

सुनवाई की तारीख/Date of Hearing : 29.10.2015

घोषणा की तारीख/Date of Pronouncement : 20.11.2015

आदेश / O R D E R

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-V, Chennai, dated 13.06.2013 and pertains to assessment year 2005-06.

2. Shri A.V. Sreekanth, the Ld. Departmental Representative, submitted that the only issue arises for consideration is with regard to reopening of assessment under Section 147 of the Income-tax Act, 1961 (in short 'the Act'). According to the Ld. D.R., for the assessment year 2005-06, the assessee filed return of income on 05.10.2005 admitting a total income of ₹44,982/-. The assessment was completed under Section 143(3) of the Act by order dated 26.12.2007. In the original assessment order, the Assessing Officer had not considered the shareholding pattern of the partners while converting the partnership into a company. According to the Ld. D.R., all the partners of the firm admittedly, before succession, became shareholders of the company. However, there was difference in allotment of shares to the partners contrary to the proviso to Section 47(xiii) of the Act. Therefore, the exemption of capital gain has to be withdrawn under Section 47A(3) of the Act. Since the Assessing Officer had not considered this at the time of original assessment, the assessment proceeding was reopened by issuing notice under Section 148 of the Act within a period of four years. However, the CIT(Appeals) found that there was a change of opinion. Therefore, he found that the Assessing Officer has no jurisdiction to reopen the assessment. According to the Ld. D.R.,

the CIT(Appeals) proceeded on the presumption that there was no negligence on the part of the assessee. The negligence on the part of the assessee would come into play when the Assessing Officer proposed to reopen assessment after four years. In this case, the assessment was reopened within four years. Therefore, there is no question of considering the negligence of the assessee. Since the shareholding pattern was not examined by the Assessing Officer, the Assessing Officer had not expressed any opinion on the issue, therefore, there is no question of any change of opinion. Further, the CIT(Appeals) has not disposed of the appeal on merit after considering the shareholding pattern of the respective partners.

3. On the contrary, Sh. A.S. Sriraman, the Ld.counsel for the assessee, submitted that the assessee has furnished all the materials before the Assessing Officer. In fact, notice under Section 143(2) of the Act was issued at the time of original assessment calling for the names and address of shareholders who subscribed the numbers of shares applied and the amount paid, etc. The assessee has furnished all the details during the course of original assessment. Merely because there was no discussion in the assessment order, it does not mean that the Assessing Officer has

not considered the same. In fact, after calling for all the materials from the assessee, the Assessing Officer allowed the claim of the assessee under Section 47(xiii) of the Act. Therefore, there is no question of any withdrawal of exemption under Section 47A(3) of the Act.

4. We have considered the rival submissions on either side and perused the relevant material available on record. No doubt a questionnaire was issued to the assessee calling certain details. From the questionnaire it is seen apparently that the details of share allotted to each partner are not called for. Therefore, the share allotted to each partner of the erstwhile firm, after succession, is not considered by the Assessing Officer at any point of time in the original assessment proceeding. Therefore, the Assessing Officer found that there was a difference in the allotment of shares. Hence, he issued notice under Section 148 within four years. As rightly submitted by the Ld.counsel for the assessee, there is no negligence on the part of the assessee. For reopening assessment within four years, it may not be necessary that there is negligence on the part of the assessee. What is necessary is to see whether any income of the assessee chargeable to tax escaped income. In

this case, the Assessing Officer came to a conclusion that there was reason to believe that the income otherwise chargeable to tax has escaped income since there was difference in the allotment of shares to the partners. Therefore, this Tribunal is of the considered opinion that the Assessing Officer has rightly reopened the assessment. Since no opinion was expressed in the original assessment, it is not the question of change of opinion. Therefore, the CIT(Appeals) may not be correct in saying that the Assessing Officer has no jurisdiction to reopen the assessment. This Tribunal is of the considered opinion that as the Assessing Officer has rightly reopened the assessment, the CIT(Appeals) has to dispose the appeal on merit on the basis of the grounds raised before him. Accordingly, the order of the CIT(Appeals) is set aside. The appeal is remitted back to the file of the CIT(Appeals). The CIT(Appeals) shall dispose the appeal on the basis of the grounds raised by the assessee before him.

5. In the result, the appeal of the Revenue is allowed for statistical purposes.

Order pronounced on 20th November, 2015 at Chennai.

sd/-

(ए. मोहन अलंकामणी)

(A. Mohan Alankamony)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 20th November, 2015.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-V, Chennai
4. आयकर आयुक्त/CIT-V, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.