

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री अब्राहम पी.जॉर्ज, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2276/Mds/2016

&

**C.O. No.129/Mds/2016**

(in I.T.A. No.2276/Mds/2016)

निर्धारण वर्ष / Assessment Year : 2007-08

The Assistant Commissioner of  
Income Tax (OSD),  
Corporate Ward – 6(3),  
Chennai - 600 034.

v. M/s SKI Retail Capital Ltd.,  
No.4, Mookambika Complex,  
Lady Desikachary Road,  
Chennai - 600 004.

(अपीलार्थी/Appellant)

PAN : AAGCS 0825 C

(Respondent & Cross-objector)

अपीलार्थी की ओर से/Appellant by : Shri Asish Tripathi, JCIT

प्रत्यर्थी की ओर से/Respondent by : Shri R. Sivaraman, Advocate

सुनवाई की तारीख/Date of Hearing : 22.06.2017

घोषणा की तारीख/Date of Pronouncement : 10.08.2017

### **आदेश / O R D E R**

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

The Revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-15, Chennai, dated 25.05.2016 and pertains to assessment year 2007-08. The assessee has also filed cross-objection against the very same order

of the CIT(Appeals). Therefore, we heard both the appeal and the cross-objection together and disposing of the same by this common order.

2. The assessee raised an issue with regard to reopening of assessment which goes to the root of the matter. Therefore, let's first take the cross-objection filed by the assessee.

3. Shri R. Sivaraman, the Ld.counsel for the assessee, submitted that the assessment was originally completed by an order dated 25.11.2011 after reopening. For the second time, the Assessing Officer reopened the assessment by issuing a notice under Section 148 of the Income-tax Act, 1961 (in short 'the Act') on 31.03.2014, after expiry of four years. According to the Ld. counsel, immediate provocation of Department to reopen the assessment for second time was the audit objection of the Department. Referring to the audit objection, a copy of which is available at page 40 of the paper-book, the Ld.counsel submitted that the assessee is in the business of providing financial and marketing services in various sectors. The audit party of the Department found that Road Safety Club Pvt. Ltd. was in the business of selling safety cards. It was also found that all expenses on salary, staff training, etc. were

incurred by the assessee at various offices and reimbursed by Road Safety Club Pvt. Ltd. The audit party ultimately found that an amount of ₹6,01,84,164/- has escaped assessment.

4. Referring to a reply filed by the assessee on 04.03.2014, a copy of which is available at page 43 of the paper-book, the Ld.counsel submitted that the Assessing Officer in categorical terms replied to the audit wing of the Department that outsourcing some of the activities of business is quite common in commercial practice. In the balance sheet of Road Safety Club Pvt. Ltd., an amount of ₹6,01,84,164/- was reflected under the head "Other advances" and it was not claimed as expenditure. The expenditure actually incurred for services rendered by the assessee-company, has been debited and appropriated against the advance received from Road Safety Club Pvt. Ltd. in the books of the assessee-company. Since it is a business arrangement between sister concerns to reimburse the actual expenditure without any markup, the Department cannot specify that such markup is necessary. The Assessing Officer has also informed the audit wing that the observation made by the audit wing is not correct and requested the audit wing to drop the audit objection. After replying to the audit wing, the Assessing Officer has

reopened the assessment by issuing notice under Section 148 of the Act.

5. Referring to Section 147 of the Act, the Ld.counsel for the assessee submitted that Section 147 clearly says that if the Assessing Officer has reason to believe that income chargeable to tax has escaped assessment for any assessment year, he may, subject to provisions of Sections 148 to 153, assess or re-assess such income and also any of the income chargeable to tax which escaped assessment. In the case before us, the Assessing Officer found that the audit objection raised by the audit wing is not correct and it is only a reimbursement of expenditure. Therefore, it cannot be said that there was reason to believe that any income chargeable to tax has escaped assessment. Hence, according to the Ld. counsel, the reopening itself is not correct, therefore, the consequential assessment framed by the Assessing Officer cannot stand in the eye of law.

6. On the contrary, Shri Asish Tripathy, the Ld. Departmental Representative, submitted that the audit wing of the Department has brought to the notice of the Assessing Officer that there was escapement of income to the extent of ₹6,01,84,164/-. Though the

assessee claims that it was business arrangement between two sister concerns, the audit party found that M/s Road Safety Club Pvt. Ltd. is making reimbursement for the expenses incurred by the assessee-company year after year. M/s Road Safety Club Pvt. Ltd. has not deducted any tax towards payment made to the assessee-company for the service rendered. The entire amount received by the assessee-company was only for rendering service, therefore, the entire sum has to be brought to tax. According to the Ld. D.R., the audit party of the Department is entitled to bring to the notice of the Assessing Officer the facts of the case and also escapement of income, therefore, the Assessing Officer has to apply his mind independently and reopen the assessment. In this case also, according to the Ld. D.R., after audit objection, the Assessing Officer independently applied his mind to issue notice under Section 148 of the Act for reopening the assessment. On a query by the Bench, the Ld. D.R. replied that even though initially the Assessing Officer found that the audit objection is not correct, subsequently he realized the mistake and issued notice under Section 148 of the Act. Therefore, the reply filed by the Assessing Officer cannot be construed that the Assessing Officer has not satisfied himself about

the income escaped from assessment. Hence, according to the Ld. D.R., the Assessing Officer has rightly reopened the assessment.

7. We have considered the rival submissions on either side and perused the relevant material available on record. We have also carefully gone through the provisions of Section 147 of the Act which reads as follows:-

“If the Assessing Officer, has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year):

Provided that where an assessment under sub-section (3) of section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return under section 139 or in response to a notice issued under sub-section (1) of section 142 or section 148 or to disclose fully and truly all material facts necessary for his assessment for that assessment year.

Provided further that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside

India, chargeable to tax, has escaped assessment for any assessment year :

Provided further that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject-matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.

*Explanation 1.*— Production before the Assessing officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing officer will not necessarily amount to disclosure within the meaning of the foregoing proviso.

*Explanation 2.*— For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely:--

(a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax;

(b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;

(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under section 92E ;

(c) where an assessment has been made, but--

(i) income chargeable to tax has been under assessed; or

(ii) such income has been assessed at too low a rate; or

(iii) such income has been made the subject of excessive relief under this Act; or

(iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed.

(d) where a person is found to have any asset (including financial interest in any entity) located outside India.

*Explanation 3.*— For the purpose of assessment or reassessment under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of section 148.

*Explanation 4.*— For the removal of doubts, it is hereby clarified that the provisions of this section, as amended, by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.”

8. For reopening assessment, it is mandatory that the Assessing Officer has reason to believe that the income chargeable to tax has escaped assessment. In the case before us, the audit wing of the Department brought to the notice of the Assessing Officer that an amount of ₹6,01,84,164/- escaped assessment. Immediately after receipt of audit objection, the Assessing Officer vide her letter dated 04.03.2014 informed the audit wing of the Department that the entire work of Road Safety Club Pvt. Ltd. was carried out by the assessee-company only is not correct. Enclosing the Profit & Loss account of Road Safety Club Pvt. Ltd., the Assessing Officer requested the audit wing of the Department to

drop the audit objection. Therefore, it is obvious that the Assessing Officer after applying his mind found that there was no escapement of income. Subsequently, the Assessing Officer issued notice under Section 148 of the Act for reopening the assessment. Therefore, this Tribunal is of the considered opinion that the Assessing Officer has not independently satisfied himself about the escapement of income.

9. The proceeding before the Assessing Officer is a judicial proceeding under Section 136 of the Act. Therefore, the reason to believe that the income has escaped assessment has to be that of the Assessing Officer and not that of any other officer of the Department. In the case before us, the Assessing Officer came to a conclusion after considering the audit objection, that there was no escapement of income. Therefore, it cannot be said that the audit wing of the Department has merely brought to the notice of the Assessing Officer the fact of escapement of income. Once, the Assessing Officer is not satisfied about escapement of income and requested the audit wing to drop the proceeding, he cannot change his mind subsequently and issue notice under Section 148 of the Act for reopening assessment. No material is available on record to suggest that the Assessing Officer reopened the assessment due to

change of circumstances after the reply dated 04.03.2014 requesting the audit wing of the Department to drop the audit objection. In the absence of any material, this Tribunal is of the considered opinion that the reopening of assessment is not justified. Therefore, the consequential assessment order passed by the Assessing Officer cannot stand in the eye of law. Accordingly, the order of the Assessing Officer is quashed.

10. In view of the decision taken in the cross-objection filed by the assessee, it may not be necessary to go into the merit of the appeal filed by the Revenue. Accordingly, the appeal is dismissed.

11. In the result, the appeal filed by the Revenue is dismissed whereas, the cross-objection filed by the assessee stands allowed.

Order pronounced on 10<sup>th</sup> August, 2017 at Chennai.

Sd/-

(अब्राहम पी.जॉर्ज)

(Abraham P. George)

लेखा सदस्य/Accountant Member

चेन्नई/Chennai,

दिनांक/Dated, the 10<sup>th</sup> August, 2017.

Sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-15, Chennai-34
4. आयकर आयुक्त/CIT-6, Chennai-34
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.