आयकर अपील य अ धकरण, ñडीò ायपीठ, चे नई

IN THE INCOME-TAX APPELLATE TRIBUNAL ôDôBENCH, CHENNAI

ी ए. मोहन अलंकामणी, लेखा सद य एवं ी धु वु आर.एल रे डी, या यक सद य के सम

Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./**I.T.A.No.1013/Mds/2017**

नधार ण वष/**Assessment Year:2002-03**

M/s. Ashok Leyland Finance Limited [Now IndusInd Bank Ltd.], No. 115/116, G.N. Chetty Road, T. Nagar, Chennai 600 017.	Vs.	The Assistant Commissioner of Income Tax, Company Circle 1(1), 121 Mahathma Gandhi Road, Nungambakkam, Chennai 600 034.

[PAN: AAACA4656P]

(**अपीलाथ /Appellant**)	(**यथ /Respondent**)

अपीलाथ क ओर से / Appellant by	:	Shri R. Vijayaraghavan, Advocate
यथ क ओर से/Respondent by	:	Mrs. S. Vijayaprabha, JCIT
सुनवाई क तार ख/ Date of hearing	:	29.11.2017
घोषणा क तार ख /Date of Pronouncement	:	12.12.2017

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the ld. Commissioner of Income Tax (Appeals) 5, Chennai dated 20.02.2017 relevant to the assessment year 2002-03. The first ground challenged by the assessee is with regard to confirmation of order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 [ñActò in short] and the second ground relates to confirmation of disallowance of ضي2,34,03,271/- under

section 43B of the Act in respect of service tax by stating that the assessee has not paid the same.

2. Brief facts of the case are that the assessee is engaged in the business of hire purchase, finance leasing and bill discounting and filed its return of income on 31.10.2002 declaring gross total income of ضي52,51,21,000/-. The return filed by the assessee was processed under section 143(1) of the Act on 27.02.2003 resulting into refund of ضي2,26,25,844/-. Subsequently, the case of the assessee was selected for scrutiny and notice under section 143(2) of the Act was issued on 11.08.2003. On verification of details filed by the assessee in response to the above notices and considering the submissions of the assessee, the Assessing Officer completed the assessment under section 143(3) of the Act on 31.03.2005 by assessing total income of the assessee at ضي57,36,86,630/- after making various additions.

3. The above assessment order stands revised under section 251 r.w.s. 263 of the Act on 30.06.2006. While passing the order under section 263 of the Act re-determining the income of the assessee at ضي56,69,58,930/-, it was observed that in Column No. 21(i)(B)(a) of the Audit Report in Form 3CD furnished along with the return of income, the Auditor had certified that an amount of ضي2,34,03,271/- representing Service Tax has been incurred by the assessee in the previous year and paid on or before the due date for

furnishing the return of income. Since the date of payment of such amount was not mentioned, the Assessing Officer was directed under section 263 of the Act to re-examine and to pass fresh assessment. Accordingly, the Assessing Officer issued a notice under section 154 of the Act to the assessee directing to clarify on whether the said amounts were paid before the due date for filing of the return. In response thereto, it was the submission of the assessee that it had not actually paid the service tax to the Government account, but had only provided in the books towards the trading loss on account of levy of service tax. It was also the submission of the assessee that it had not collected any service tax from its customers and therefore, it was not liable for payment of service tax. Since as per the provisions of section 43B of the Act, no statutory liability, unless it is paid before the due date of filing of the return is allowable as an expenditure, the amount of expenditure claimed by the assessee deserves disallowance and accordingly, notice under section 148 of the Act was issued on 29.09.2008 by communicating the reasons recorded for reopening of assessment. The assessee, vide it letter dated 06.10.2008, requested that the return originally filed on 31.10.2002 be treated as a return filed in response to the above notice. Thereafter, a notice under section 143(2) of the Act was also issued on 31.10.2008. During the course of reassessment proceedings, the assessee seriously objected to the reopening of assessment as there was no failure to disclose truly and fully all material facts relevant for the

assessment. After considering the submissions of the assessee, when the assessee has been categorically classified in the Audit Report that the service tax payment has been made before the due date for filing of the return and not mentioned the actual date of payment of such amount, in fact, the assessee has furnished in accurate particulars, the Assessing Officer rejected the objection of the assessee with regard reopening of assessment.

4. Aggrieved, the assessee carried the matter in appeal before the ld. CIT(A). After considering the submissions of the assessee with regard to reopening of assessment under section 147 of the Act, the ld. CIT(A) sustained the assessment order passed under section 143(3) r.w.s. 147 of the Act.

5. On being aggrieved, the assessee is in appeal before the Tribunal and the ld. Counsel for the assessee has vehemently contended that reopening of assessment under section 147 of the Act is bad in law since the assessment order passed under section 143(3) of the Act was reopened after lapse of four years and prayed that the reassessment order passed by the Assessing Officer should be quashed. On the other hand, the ld. DR strongly supported the orders of authorities below.

6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. With regard to the argument of the ld. Counsel for the assessee that the reassessment

proceedings have been initiated after a lapse of four years from the end of relevant assessment year is bad in law is not acceptable, because, as per section 149(1)(b) of the Act, the time limit upto 6 year is available for issue of notice under section 148 of the Act, where as per the opinion of the Assessing Officer that the income escaping assessment is likely to amount to ضي1 lakh or more for the relevant year. In the present, as the income escaping assessment exceeds ضي1 lakh, the said condition is satisfied and therefore, the ground raised by the ld. Counsel cannot survive.

7. In this case, it was observed that in Column No. 21(i)(B)(a) of the Audit Report in Form 3CD furnished along with the return of income, the Auditor had certified that an amount of ضي2,34,03,271/- representing Service Tax has been incurred by the assessee in the previous year and paid on or before the due date for furnishing the return of income. Since the date of payment of such amount was not mentioned, the Assessing Officer was of the opinion that the income escaped assessment and the assessee has furnished inaccurate particulars of income, by recording reasons, he reopened the assessment. Where there is a live and clear nexus between the said information and the reasons to believe escapement of income, formed on that basis, the assumption of jurisdiction to reassess cannot be called into question as was sought to be canvassed before us. Thus, we

hold that the entire assessment in this case is valid and therefore, the reopening of assessment stands upheld.

8. With regard to confirmation of disallowance of ضي2,34,03,271/- representing Service Tax, by way of filing of memorandum of additional grounds, the ld. Counsel for the assessee has submitted that the assessee did not collect and pay the service tax in view of the stay granted by the Hon'ble Madras High Court and that the assessee did not claim any amount towards service tax as deduction in its income tax return and prayed that the disallowance made by the Assessing Officer and confirmed by the ld. CIT(A) should be deleted. On the other hand, the ld. DR strongly supported the orders of authorities below.

8.1 We have heard rival contentions. We have also gone through the Tax Audit Report filed by the assessee and find that in Column No. 21(i)(B)(a) of the Audit Report in Form 3CD, the Auditor had certified that an amount of ضي2,34,03,271/- representing Service Tax has been incurred by the assessee in the previous year and paid on or before the due date for furnishing the return of income under section 139(1) of the Act, whereas, against the column 'date of payment', it was mentioned as 'not paid'. Upon perusal of the assessment order passed under section 143(3) r.w.s. 147 of the Act, the Assessing Officer has nowhere mentioned that the assessee has collected the service tax from its customers and in turn, it was not paid to Government

account. The disallowance made by the Assessing Officer was purely based on the tax audit report filed by the assessee. We find force in the contention raised by the ld. Counsel that the assessee has never collected the service tax and never claimed deduction since the Hon'ble Madras High Court has stayed levy of service tax in the case of non banking finance company and thus, it was only provision. Under these facts and circumstances, we remit the matter back to the file of the Assessing Officer to verify as to whether the assessee has collected any service tax and not paid to the Government account before due date of filing of return of income under section 139(1) of the Act and if it was found that the assessee has not collected any service tax from its customers, then the disallowance made by him should be deleted.

9. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on the 12th December, 2017 at Chennai.

Sd/-	Sd/-
(A. MOHAN ALANKAMONY)	(DUVVURU RL REDDY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Chennai, Dated, the 12.12.2017

Vm/-

आदेश क□ □त□ल□प अ□ेषित/Copy to: 1. अपीलाथ□/Appellant, 2.□□यथ□/Respondent, 3. आयकर आयु□त (अपील)/CIT(A), 4. आयकर आयु□त/CIT, 5. □वभागीय □त□नध□/DR & 6. गाड□फाईल/GF.