

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH "A", MUMBAI
BEFORE SHRI B.R. BASAKARAN, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No.429/Mum/2016

(Assessment Year- 2006-07)

DCIT-14(1)(1), Room No.460, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020	Vs.	M/s Aditya Marine Ltd. 411, Raikar Chamber, 234, N.G. Acharya Marg, Govandi, Mumbai-400088 PAN:-AAACEA8257C
(Appellant)		(Respondent)

Revenue by	:	Shri M.C. Omi Ningshen-DR
Assessee by	:	Shri Ajit Kumar Jain & Shri Siddhesh Chaugule
Date of hearing	:	08/05/2018
Date of Pronouncement	:	18/05/2018

Order Under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the Revenue u/s 253 of the Income Tax Act, directing against the order of Ld. Commissioner of Income Tax (Appeals) -10, Mumbai, dated 23/10/2015 for the Assessment Year 2006-07.
2. The Revenue has raised the following grounds of appeal:-
 1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A), erred in holding the reopening of assessment for the A.Y. 2006-07 as not proper.
 2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A), erred in deleting the addition made by the A. O. Of `7,45,45,449/- against the survey fees, excess payment of Liaoning fees and suppression of GP/NP.
3. Brief facts of the case are that the assessee-company is engaged in the business of clearing & forwarding shipping agent/cargo & vessel

handling, surtax plant export trading, production of power through wind mill equipment and e-filed the return of income for the Assessment Year 2006-07 on 31/10/2007, declaring total income at Rs. NIL. The assessment was completed u/s 143(3) of the Act. Subsequently, the assessment was reopened u/s 147 of the Act. A notice u/s 148 of the Act dated 26/03/2013 was served upon the assessee. Assessment was reopened on the basis of survey report received from ACIT Gandhidham dated 26/03/2013. It was reported by ACIT Gandhidham that a survey was conducted on 27-29/12/2012 at branch office of the assessee company at Gandhidham. Statement of Managing Director was recorded on 01/01/2013 and 02/01/2013, On the basis of said report the Assessing Officer issued notice u/s 148 of the Act on the ground that due to un-disclosure of fully and truly all material facts, necessary for assessment by the assessee the income escaped assessment. The assessee filed its objection against the reopening of the assessment and requested for reasons of reopening. The reasons of reopening was provided to the assessee vide letter dated 01/10/2013. In response to the reasons of reopening, the assessee again raised objection on 03/10/2013 and contended that the assessment cannot be reopened on that report. The objection of the assessee was disposed of and was communicated to the assessee vide letter dated 13.01.2014. The Ld. Assessing Officer proceeded for reassessment u/s 143(3) r.w.s. 147 of the Act. The re-assessment was completed on 28/03/2014. The Assessing

Officer while passing assessment order disallowed the survey fees of Rs.2,07,991/- and 50% of liasoning fees i.e. Rs.3,62,14,274/-. The Assessing Officer also estimated the net profit @ 17%. On appeal before the Ld. Commissioner of Income Tax (Appeals), the reassessment was held in improper and invalid. The assessee was also granted relief on various additions. Therefore, aggrieved by the order of the Ld. Commissioner of Income Tax (Appeals), the Revenue filed present appeal before us.

4. We have heard the Ld. Departmental Representative (DR) for the revenue and the Ld. Authorized Representative (AR) of the assessee and perused the material available on record. The Ld. Departmental Representative for the Revenue supported the order of the Ld. Assessing Officer. The Ld. Departmental Representative submits that assessment was reopened on the basis of information received from ACIT Gandhidham. In the said report, there was credible information about the payment of bogus survey fees. The Ld. (DR) of the revenue submits that the AO made reopening on the basis of survey report by ACIT Gandhidham, wherein, it was reported that survey commission paid by the assessee was found to be bogus. On the other hand the Ld. AR for the assessee submits that the Ld. Commissioner of Income Tax (Appeals) has observed that no incriminating material was found for Assessment Year 2013-14 or for Assessment Year 2006-07 during the course of survey proceedings, therefore, the Ld.

Commissioner of Income Tax (Appeals), after considering the facts of the case, quashed the notice u/s 148 of the Act.

5. We have considered the rival submissions of the parties and have gone through the orders of authorities below. The assessment for under consideration was initially completed on 13/12/2008 u/s 143(3) of the Act. The assessment was reopened under section 147 on 26/03/2013. The reopening is beyond four years from the end of relevant Assessment Year. As per proviso of section 147 of the Act, no reopening is permissible beyond 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 disclose fully and truly all material facts necessary for his assessment. A perusal of reasons recorded/conveyed to the assessee reveals that there is no reference if the income escaped assessment by not disclosing all material facts truly and fully necessary for assessment. We have further noted that the Ld. Commissioner of Income Tax (Appeals) has recorded that no evidence relating to the Assessment Year 2006-07 was found during the survey proceedings. Survey was conducted on 27-29/12/2012 and that assessment u/s 143(3) r.w.s. 147 was passed on 28/03/2014. No tangible evidence has been taken on record which may show that there was material/evidence for reopen the assessment for Assessment Year 2006-07. The Ld. Commissioner of Income Tax (Appeals) concluded that in absence

of tangible material, the Ld. Assessing Officer is barred from reviving his own order as per the decision of Hon'ble Supreme Court in the case of Kelvinator (India) Ltd.(supra). In our view, in absence of any tangible material, the reopening of assessment u/s 147 of the Act beyond the period of four year from the end of relevant Assessment Years is not permissible. Thus, we do not find any reason to interfere with the finding of the Ld. Commissioner of Income Tax (Appeals). No contrary law is brought to our notice to take different view. In the result, ground No.1 of the appeal, raised by the Revenue is dismissed.

6. Since, we have upheld the finding of the Ld. Commissioner of Income Tax (Appeals) in ground No.1 holding that the reopening u/s 147 of the Act was invalid, therefore, discussion on other ground of appeal on merit raised by the Revenue have become academic.

7. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on day of 18th May 2018.

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated 18/05/2018

Shekhar. P.S

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

BY ORDER
(Asstt. Registrar)
ITAT, Mumbai