

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA BENCH 'SMC', KOLKATA
[Before Shri P.M. Jagtap, AM]**

I.T.A. No. 2466/Kol/2017
Assessment Year: 2007-08

Parvati Resources Pvt. Ltd.....Appellant
6A, Elgin Road,
Kolkata - 700 020.
[PAN: AACCP 4827 F]

Income Tax Officer Kolkata.....Respondent
Ward No. 5(1),
P-7, Chowringhee Square,
Kolkata - 700 069.

Appearances by:

Shri Manish Tiwari, FCA appearing on behalf of the Assessee.
Shri D.C. Mondal, Addl. CIT appearing on behalf of the Revenue.

Date of concluding the hearing : May 29, 2018

Date of pronouncing the order : July 06, 2018

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT (Appeals) - 2, Kolkata dated 06.11.2017.

2. The assessee in the present case is a company which is carrying on the business of contracting. The return of income for the year under consideration was filed by it on 10.11.2017 declaring a total income of Rs. 6,79,590/-. In the assessment originally completed under section 143(3) vide an order dated 21.12.2009, the total income of the assessee as declared in the return of income was accepted by the A.O. The said assessment however was subsequently reopened by the A.O. and a notice under section 148 was issued by him to the assessee on 29.03.2014 after recording the reasons. In pursuance of the said notice, assessment was completed by the A.O. under section under section 147/143(3) vide an order dated

21.07.2014 wherein the addition of Rs. 2,39,820/- was made by the A.O. to the total income of the assessee on account of disallowance of assessee's claim for loss relating to three companies which had merged with the assessee company. Against the order passed by the A.O. under section 147/143(3), an appeal was preferred by the assessee before the Ld. CIT(A) challenging therein the validity of the said assessment as well as disputing the addition of Rs. 2,39,820/- on merit. During the course of appellate proceedings before the Ld. CIT(A), a detailed submission was filed by the assessee in writing in support of its case on both the issues. The Ld. CIT(A) however did not find merit in the said submission and proceeded to uphold the order passed by the A.O. under section 147/143(3) mainly adopting the same reasons as given by the A.O. in the assessment order. Aggrieved by the order of the Ld. CIT(A), the assessee has filed this appeal before the Tribunal.

3. I have heard the arguments of both the sides and also perused the relevant material available on record. In support of the preliminary issue raised in ground no 1 challenging the validity of the assessment made by the A.O. under section 147/143(3), the learned counsel for the assessee has contended that the assessment originally completed by the A.O. under section 143(3) was reopened by the A.O. after expiry of four years from the end of the relevant assessment year without pointing out that the income of the assessee had escaped assessment as a result of the failure of the assessee to furnish fully and truly all material facts necessary for his assessment. He has contended that the reopening of assessment by the A.O. beyond a period of four years without pointing out such failure on the part of

the assessee thus was bad in law being barred by limitation as per the first proviso to section 147 and the assessment made by the A.O. under section 147/143(3) in pursuance thereof is liable to be cancelled being invalid. The learned DR, on the other hand, has not raised any material contention to counter the arguments raised by the learned counsel for the assessee.

4. As per the proviso to section 147, where an assessment has been made for the relevant assessment year under section 143(3), no action shall be taken by the A.O. under section 147 after expiry of four years from the end of the relevant assessment year unless any income chargeable to tax as escaped assessment for such assessment year inter alia by reason of the failure on the part of the assessee to disclose fully and truly all the material facts necessary for his assessment for that assessment year. In the present case, the assessment originally completed under section 143(3) for A.Y. 2007-08 was reopened by the A.O. on 29.03.2014 i.e. after expiry of four years from the end of the assessment year under consideration and it was therefore incumbent upon the A.O. as per the first proviso to section 147 to point out that any income chargeable to tax had escaped assessment 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 the reasons recorded by the A.O. however shows that no such failure on the part of the assessee was pointed out by him as envisaged in the first proviso to section 147. I, therefore, find merit in the contention of the learned counsel for the assessee that the reopening of assessment by the A.O. was barred by limitation and the assessment made by the A.O. under section 147/143(3) in

pursuance thereof is liable to be cancelled being invalid, I order accordingly and allow this appeal of the assessee

5. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 6th July, 2018.

Sd/-
(P.M. Jagtap)
ACCOUNTANT MEMBER

Dated: 06/07/2018

Biswajit, Sr. PS

Copy of order forwarded to:

1. Parvati Resources Pvt. Ltd., 6A, Elgin Road, Kolkata – 700 020.
2. ITO Ward 5(1), Aayakar Bhawan, P-7, Chowringhee Square, Kolkata – 700 069.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Sr. P.S. / H.O.O.
ITAT, Kolkata