

आयकर अपीलिय अधिकरण, “ए” न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL ‘A’ BENCH, CHENNAI
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri Abraham P. George, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

I.T.A.Nos.1285 and 1286/Chny/2006
निर्धारण वर्ष/Assessment Years: 1997-98 & 1998-99

Shri Hari Poddar & Others,
L/H & Husband Pratibha Poddar,
32, Ottukkara Chinniah Street,
Erode 638 003.

Vs. The Deputy Commissioner of
Income Tax,
Circle I, Erode.

[PAN:AGGPP0944E]

(अपीलार्थी /Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri K. Raghu, C.A.
प्रत्यर्थी की ओर से/Respondent by : Shri Homi Rajvansh, CIT
सुनवाई की तारीख/ Date of hearing : 05.09.2018
घोषणा की तारीख /Date of Pronouncement : 22.10.2018

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

Both the appeals filed by the assessee are directed against the common order of the Id. Commissioner of Income Tax (Appeals) I, Coimbatore dated 15.03.2006 relevant to the assessment years 1997-98 and 1998-99. In both the appeals, the assessee has raised various grounds leading up to ground Nos. 8/9, but the only ground agitated by the Id. Counsel for the assessee is with regard to reopening of assessment under section 147 of the Income Tax Act, 1961 [“Act” in short].

2. Both the appeals of the assessee were finally recalled and posted for hearing vide consolidated order of the Tribunal in M.P. Nos. 110, 111 & 112/Chny/2018 dated 13.07.2018

3. Brief facts of the case are that the assessee has filed the returns of income for the assessment years 1997-98 and 1998-99 on 31.10.1997 and 30.10.1988 respectively and the same was processed under section 143(1) of the Act. While making assessment in the case of another turmeric merchant, the Assessing Officer noticed that Periyar Marketing Committee did not trade in turmeric and so, their name cannot appear either as a debtor or a creditor in the books of any person. On verification of the details furnished by the assessee, the Assessing Officer noticed that in the assessee's case, Periyar Marketing Committee, Erode was shown as a trade creditor for the year ended 31.03.1997 & 31.03.1998. Since there were omissions on the part of the assessee in admitting true income, a notice under section 148 of the Act was issued on 25.11.2000. The assessee failed to file the return of income in response to the notice under section 148 of the Act. Thereafter, a notice under section 142(1) of the Act was issued on 06.12.2001. There was no response to the notice. When the assessee was given final opportunity on 30.01.2002, the assessee's representative appeared. After examining various details during the course of reassessment

proceedings, the assessment was completed under section 144 r.w.s. 147 of the Act after making various additions.

4. The assessee carried the matter in appeal before the Id. CIT(A) for both the assessment years. After considering the submissions of the assessee and by following the decision of the in the case of GKN Driveshafts India Ltd. v. ITO 259 ITR 19 (SC), the Id. CIT(A) sustained the reopening of assessment under section 147 of the Act.

5. On being aggrieved, the assessee is in appeal before the Tribunal and challenged the reopening of assessment under section 147 of the Act. By filing copy of the decisions in the case of M/s. PVP Ventures Ltd. v DCIT in W.A. No. 1171 & 1172 of 2015 dated 27.10.2015 as well as in the case of Martech Peripherals P. Ltd. v. DCIT 394 ITR 733 (Mad), the Id. Counsel for the assessee has argued that the reopening of assessment under section 147 of the Act is bad in law. He further relied on the decision in the case of CIT v. Jet Airways (India) Ltd. 331 ITR 236) and prayed that the assessment order passed under section 144 r.w.s. 147 of the Act may be set aside. On the other hand, the Id. DR strongly supported the order passed by the authorities below.

6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below including case law relied

upon by the Id. Counsel for the assessee. In this case, both the returns filed by the assessee were processed under section 143(1) of the Act and admittedly, no order under section 143(3) of the Act was passed. The returns processed under section 143(1) of the Act were reopened on the ground that on verification of the details furnished by the assessee, the Assessing Officer noticed that in the assessee's case, Periyar Marketing Committee, Erode was shown as a trade creditor for the year ended 31.03.1997 & 31.03.1998. Since there were omissions on the part of the assessee in admitting true income, a notice under section 148 of the Act was issued on 25.11.2000. Thus, by recording the above two solid reasons, the Assessing Officer initiated proceedings under section 147 of the Act. Admittedly, with regard to showing Periyar Marketing Committee, Erode as a trade creditor, the explanation offered by the representative of the assessee has been accepted by the Assessing Officer during reassessment proceedings. In so far as the other bought note purchases, relevant to the assessment year 1997-98, the farmers produced by the assessee before the Assessing Officer have stated that they have sold turmeric to the assessee by accepting some advance on the date of sale and collected the balance after some time ranging from 15 days to one or two months. However, Assessing Officer noticed that the assessee has not accounted for these advances in the books of accounts. The total outstanding in the names of such persons are to the extent of ₹.58,35,078/-. Since the agriculturists stated that they received token

advances from the assessee for the turmeric sales on the date of sale, which was not admitted in the accounts of the assessee, a fair estimate at 1% on this amount was taken towards the advance paid by the assessee, which works out to ₹.58,350/- and the same was brought to tax. Further, the net profit admitted by the assessee was too low for the turnover reported. The assessee was, therefore, asked to produce all invoices, sale bills, vouchers for expenses, to substantiate the correctness of net profit. The assessee could not produce such invoices, vouchers for expenses in spite of so many opportunities given. Instead, at the time of hearing on 28.03.2002, the AR of the assessee filed a letter for assessment year 1997-98, working out the net profit rate at 1% on the turnover and requested that the difference between this 1% on the turnover, namely ₹.13,73,284/- and net profit already admitted namely ₹.6,23,187/- can be taken as additional income for this assessment year, which works out to ₹.7,50,097 [₹.13,73,284 – ₹.6,23,187] and brought to tax.

6.1 Similarly, with regard to other omissions on the part of the assessee in the assessment year 1998-99, in admitting true income, in respect of the outstanding balance to the tune of ₹.20,23,444.75 shown in the name of Shri H.Suresh Agarwal, Vidyalaya Street, Geetha Nagar, Erode-11, the incumbent was summoned and recorded his statement on 13.03.2002, wherein he has denied having sold any turmeric to the assessee and there are no amounts

due to him from the assessee as on 31.03.1998. Moreover, Shri H. Suresh Agarwal was assessed to tax and his account books reveal no such transaction with the assessee for the year ended 31.03.1998. Accordingly, the outstanding balance of ₹.20,23,444.75 shown in his name was treated as unexplained credit and the same was assessed under the head other sources.

6.2 With regard to unaccounted purchase of turmeric from the farmers in the assessment year 1998-99, the token advances received from the assessee for the turmeric sales on the date of sale, which was not admitted in the accounts of the assessee, a fair estimate at 1% on this amount was taken towards the advance paid by the assessee, which works out to ₹.80,570/- and the same was brought to tax. Further, the AR of the assessee filed a letter for working out the net profit at 1% on the turnover of ₹.41,46,568/- and already admitted by the assessee at ₹.9,29,756/- and the difference comes to ₹.32,16,812 [₹.41,66,568 – ₹.9,29,756] and the same was brought to tax.

6.3 From the facts narrated hereinabove, it is clear that the assessee has not furnished complete and true particulars of income in the return filed under section 139(1) of the Act for both the assessment years. Moreover, we find that the assessee has not asked for any “reasons recorded” for adjudication by Assessing Officer, in fact, the assessee has not represented against the

notice under section 148 of the Act. However, the assessment order clearly speaks twin reasons for reopening of assessment and thus, we are of the considered opinion that the Assessing Officer has validly issued notice under section 148 of the Act and initiated reassessment proceedings, and but for the reassessment proceedings, the above undisclosed income of the assessee would have escaped assessment, pending regular assessment under section 143(3) of the Act.

6.4 With regard to the case law relied on by the Id. Counsel for the assessee relating to validity of assessment under section 147 of the Act, in the case of PVP Ventures Ltd. v. DCIT (supra), scrutiny assessment was completed under section 143(3) of the Act and when the case was reopened, the assessee has demanded reasons for reopening of assessment, but the objections of the assessee were not adjudicated before passing the assessment order under section 143(3) r.w.s. 147 of the Act. But, in the case in hand, neither scrutiny assessment was completed under section 143(3) of the Act nor the assessee has demanded reasons for reopening. Thus, the above case law has no application to the facts of the present case. Similarly, in the case of Martech Peripherals P. Ltd. v. DCIT (supra), even though scrutiny assessment was not completed under section 143(3) of the Act, the objections raised against the notice under section 148 of the Act was not adjudicated by the Assessing Officer. This is not the issue in appeal under

consideration. Moreover, in the case of CIT v. Jet Airways (I) Ltd. (supra), the question of law raised before the Hon'ble Bombay High Court was whether the Assessing Officer can assess some other income independently other than the reasons recorded? In the case in hand, by recording two specific reasons, the Assessing Officer issued notice under section 148 of the Act and other than the reasons recorded for reopening of assessment, the Assessing Officer has not assessed any other income and brought to tax. Thus, all the above case law relied on by the Id. Counsel for the assessee have no application to the facts of the present case. Accordingly, the only legal issue raised by the Id. Counsel for the assessee for adjudication stands dismissed for both the assessment years.

7. In the result, both the appeals filed by the assessee are dismissed.

Order pronounced on the 22nd October, 2018 at Chennai.

Sd/-
(ABRAHAM P. GEORGE)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 22.10.2018

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.