आयकर अपीलीय अधिकरण, **"**डी**"** न्यायपीठ**,** चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'D' BENCH, CHENNAI
श्री ए. मोहन अलंकामणी, लेखा सदस्य एवं श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष
Before Shri A. Mohan Alankamony, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./**I.T.A.No.361/Chny/2018**
निर्धारण वर्ष/**Assessment Year:2010-11**

M/s. Muktha Infrastructure (P) Ltd., 4/318, Marg Axis, Rajiv Gandhi Salai, Kottivakkam, Chennai 600 041.	Vs.	The Income Tax Officer, Corporate Ward 4(1), Chennai.

[PAN: AAFCM0703Q]

(**अपीलार्थी /Appellant**) (**प्रत्यर्थी/Respondent**)

अपीलार्थी की ओर से / Appellant by	:	Shri D. Anand, Advocate
प्रत्यर्थी की ओर से/Respondent by	:	Ms. Vijayaprabha, JCIT
सुनवाई की तारीख/ Date of hearing	:	02.08.2018
घोषणा की तारीख /Date of Pronouncement	:	15.10.2018

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) 8, Chennai dated 06.11.2017 relevant to the assessment year 2010-11. The ground raised by the assessee is that the ld. CIT(A) has erred in upholding the reopening of assessment under section 147 of the Income Tax Act, 1961 ["Act" in short] and also confirming the addition of ₹.3,10,33,094/- under section 115JB of the Act.

2. The appeal filed by the assessee is delayed by 17 days, for which, the assessee has filed petition in support of an affidavit for condonation of the

delay, to which; the ld. DR has not raised any serious objection. Consequently, since the assessee was prevented by sufficient cause, the delay of 17 days in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. Brief facts of the case are that the assessee has filed its return of income on 29.09.2010 declaring NIL income. The return filed by the assessee was processed under section 143(1) of the Act on 14.04.2011. Subsequently, the case of the assessee was selected for scrutiny under CASS and notice under section 143(2) of the Act was issued on 26.08.2011. The assessment under section 143(3) of the Act was completed on 22.03.2013. Thereafter, the case of the assessee was reopened under section 147 of the Act and notice under section 148 of the Act was issued on 10.12.2014 and duly served on the assessee on 20.12.2015. After considering the submissions of the assessee, the assessment under section 143(3) r.w.s. 147 of the Act was completed on 18.02.2016 by making addition of ₹.3,10,33,094/- under section 115JB of the Act.

4. The assessee carried the matter in appeal before the ld. CIT(A) and challenged the reopening of assessment under section 147 of the Act as well as on merits. After considering the submissions of the assessee as well as

considering the facts of the case, the ld. CIT(A) dismissed both the grounds raised by the assessee.

5. On being aggrieved, the assessee is in appeal before the Tribunal. The ld. Counsel for the assessee vehemently argued that the assessment which was subjected to scrutiny and completed under section 143(3) of the Act, without any fresh tangible material evidence, the reopening of assessment under section 147 of the Act is bad in law and barred by limitation merely on the basis of change of opinion. The ld. Counsel for the assessee further argued that the entire materials were placed before the Assessing Officer during the course of original assessment and after verification of the details filed by the assessee, the assessment was completed under section 143(3) of the Act. Therefore, the reopening of assessment under section 147 of the Act, not being on the basis of any fresh and additional material, but only on change of opinion, is not valid in law and prayed for quashing the assessment made under section 143(3) r.w.s. 147 of the Act. On the other hand, the ld. DR supported the order passed by the ld. CIT(A).

6. We have heard both sides, perused the materials available on record and gone through the orders of authorities below. In this case, the return filed by the assesse was processed under section 143(1) of the Act on 14.04.2011 and thereafter, the case was selected for scrutiny under CASS and notice

under section 143(2) of the Act was issue on 26.08.2011. After verification of the details furnished by the assessee in response to the statutory notices, the assessment under section 143(3) of the Act was completed on 22.03.2013. Admittedly, there was no search & seizure operation or survey conducted in this case. However, the case of the assessee was reopened under section 147 of the Act by issuing notice under section 148 of the Act on 10.12.2014 and duly served on the assessee on 20.12.2015. From the above details, it is evident that the assessment completed under section 143(3) of the Act was reopened under section 147 of the Act beyond four years.

6.1 As per the proviso to section 147 of the Act, where an assessment under section 143(3) of the Act is completed, the reassessment under section 147 of the Act cannot be made 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 disclose fully and truly all material facts necessary for completion of assessment. In our considered view, the assessee has filed all necessary details during the course of assessment proceedings before the Assessing Officer disclosing fully and truly all material facts for completion of assessment and the Assessing Officer has not disturbed the computation under section 115JB of the Act. Therefore, in view of the proviso to section

147 of the Act, since there is no failure on the part of the assessee in disclosing material facts necessary for completion of assessment, the reassessment made under section 147 of the Act beyond four years from the end of the relevant assessment year is bad in law. The Hon'ble Supreme Court in the case of CIT v Foramer France [264 ITR 566] affirmed the decision of the Hon'ble Allahabad High Court in the case of CIT v. Foramer France [247 ITR 436], wherein the Hon'ble High Court held that when there was no failure on the part of the assessee to disclose fully and truly all material facts for assessment, the assessment cannot be reopened under section 147 of the Act and is barred by limitation. It was also held that the assessment cannot be reopened on mere change of opinion. In the case of CIT v. M/s. Kelvinator of India Ltd. [320 ITR 561], the Hon'ble Supreme Court held that after 01.04.1989, the Assessing Officer has power to reopen the assessment under section 147 provided he has reason to believe that income has escaped assessment and there is tangible material to come to the conclusion that there is escapement of income and mere change of opinion cannot *per se* the reason to reopen the assessment. In the present case, the Department has not brought out any tangible material on record, suggesting that the income has escaped from assessment. In view of the above, we hold that the reopening of the assessment made by the Assessing Officer is bad in law. Accordingly, we set aside the order of the ld. CIT(A) and quash the

assessment order passed under section 143(3) r.w.s. 147 of the Act. Thus, the ground raised by the assessee stands allowed. Since we have quashed the assessment order under section 143(3) r.w.s. 147 of the Act, the addition made under section 115JB of the Act requires no adjudication.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced on the 15th October, 2018 at Chennai.

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

Chennai, Dated, the 15.10.2018

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.