

**IN THE INCOME TAX APPELLATE TRIBUNAL "D", BENCH  
MUMBAI**

**BEFORE SHRI M.BALAGANESH, AM  
&  
SHRI RAM LAL NEGI, JM**

**ITA No.1663/Mum/2018  
(Assessment Year :2009-10)**

ACIT-20(1), Room No.113, 1 <sup>st</sup> Floor, Piramal Chambers Lalbaug, Mumbai – 400 012	Vs.	Shri Dhananjay Mishra Unit No.29, Neelgiri Industrial Estate T.J.Road, Sewree (W) Mumbai – 400 015
<b>PAN/GIR No. AFLPM1475K</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Revenue by	Shri Rahul Raman
Assessee by	Shri Satish R Mody
<b>Date of Hearing</b>	<b>05/09/2019</b>
<b>Date of Pronouncement</b>	<b>11/09/2019</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.1663/Mum/2018 for A.Y.2009-10 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-32, Mumbai in appeal No.CIT(A)-32/IT-501/20(1)/2016-17 dated 27/11/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 30/12/2016 by the Id. ACIT-20(1), Mumbai (hereinafter referred to as Id. AO).

2. The only issue involved in this appeal is as to whether the Id. CIT(A) was justified in quashing re-assessment proceedings as bad in law in the facts and circumstances of the case.

3. We have heard rival submissions. We find that the assessee is an individual and proprietor of M/s. Yeomen Services Ltd., engaged in the business of repair and maintenance of ships and naval vessels for Indian Navy and Coast Guard. The return of income for the A.Y.2009-10 was filed by the assessee on 30/09/2009 declaring total income of Rs.79,76,375/-. Later, the assessment was sought to be reopened by issuance of notice u/s.148 of the Act and re-assessment was completed u/s.143(3) r.w.s. 147 of the Act dated 31/03/2015. Later another reopening notice was issued by the Id. AO on 22/03/2016 by recording the following reasons:-

*“5.1.2 The Reasons recorded for reopening are as under.*

*"Information has been received from ACIT 30(1), Mumbai vide letter no. Mum/ACIT-30(1)/Transfer/2015-16 dated 27-01-2016 that assessee was allotted 127789 equity shares of face value 100/- from company YMPL in which he is a director during FY 2008-09.*

*During the same period, company allotted its equity share at Rs. 100/- to another investor.*

*Hence this office has reason to believe that assessee received benefit/perquisite to the tune of Rs. 115010100 (^900X127789) from YMPL which should have been offered to taxation u/s 2(24)(iv) of Income Tax Act, 1961.*

*Moreover during scrutiny assessment for AY 2013-14. there was addition to the tune of Rs. 25,88,336/- in the hands of assessee as deemed dividend because assessee received loan from YMPL. This loan taking by assessee from YMPL is repetitive in nature and is happening since AY 2009-10.*

*Moreover there was addition on account of concealment of salary during A.Y. 2013-14. Thus I have reason to believe that income has escaped assessment in the case of the assessee”*

3.1. The second re-assessment was completed by the Id. AO u/s.143(3) r.w.s. 147 of the Act on 30/12/2016 determining the total income of the assessee at Rs.12,44,29,190/- after making addition towards perquisites / benefit u/s.2(24)(iv) of the Act to the tune of Rs.11,50,10,100/-. From the above it could be safely concluded that reopening is beyond four years and we find from the reasons recorded that the Id. AO had not pointed out any failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment for the year under consideration in the return of income. Hence, we find the applicability of first proviso to Section 147 of the Act would come into operation in the instant case. We find that the Id. CIT(A) had quashed reopening by observing as under:-

*“I have gone through the detailed submissions made and the arguments put forth by the Ld AR and the judicial precedents relied upon. The contention of the appellant in the light of the reasons recorded for reopening the assessment read together points out to several lacuna in the reasons recorded for reopening the assessment. The first and foremost is that there was earlier reopening of the assessment carried out in the case of the appellant and reassessment order was passed u/s. 143(3) r.w s. 147 dated 31 03.2015 wherein addition of Rs.33,34,760/- was made to the returned income of the appellant of Rs.79,76,375/-, thus assessing the total income of the appellant at Rs.1,13,11,140/-. Copy of this reassessment order dated 31.03.2015 is placed on record However, in the entire reassessment order passed u/s.143(3) r.w.s. 147 of the Act dated 30.12.2016 against which this present appeal is preferred, the Ld. AO has not even mentioned anywhere about the fact of earlier assessment order being passed in the case of the appellant u/s 143(3) r.w.s. 147 of the Act and in fact, even in the computation of total income*

*of the present reassessment order, there is no mention of the earlier reassessment order being passed in the case of the appellant and even the addition made in that order is not referred to anywhere and the total income is computed based upon the original return of income and computation filed by the appellant. This fact goes to show non application of mind by the AO and order passed in haste without even perusing the records of the case of the appellant for the same assessment year. Be that as it may, the reopening notice issued u/s 148 of the Act dated 22.03.2016 is definitely beyond the four years from the relevant assessment year. In that case, the proviso to sec.147 of the Act clearly gets attracted since there is assessment completed prior to the initiation of the present reopening proceedings. According to the proviso to sec.147 of the Act, where there has been an assessment or reassessment made for the relevant assessment year, no action for reassessment shall be taken after the expiry of four years from the end of the relevant assessment year unless the income' chargeable to tax has escaped assessment for the reason of failure on the part of the appellant to disclose fully and truly all material facts necessary for assessment.*

*5.1.7 As seen from the reasons recorded for reopening of the assessment there is no allegation whatsoever made that the escapement of income, if any, is due to the failure on the part of the appellant to disclose fully and truly all material facts necessary for assessment. Further, as seen from the Audited accounts and balance sheet of the appellant proprietary concern M/s. Yeoman Marine Services, in the List of investments as per Schedule 'F' to the balance sheet, the appellant has duly disclosed the investment in shares of the company YMPL of the total amount of Rs.1,27,78,900/- ie 1,27,789 equity shares allotted by YMPL at Rs.100/- per share, in respect of the transaction with YMPL for which addition of deemed dividend is made, the closing balance with YMPL is included in the gross amount shown in the balance sheet under the head 'Advance against orders' in Schedule 'D' of List of Sundry Creditors. As regards salary is concerned, though the Ld. AO has not made any addition in the reassessment order, salary income is duly offered to tax in the return of income filed as per the computation of total income. Thus, it is seen that the appellant has duly disclosed the transactions in the Audited accounts and all the transactions are duly reflected in the regular books of account of the appellant. In view of the facts and circumstances of the case, I am of the opinion that there is no valid reason to reopen the assessment beyond the period of 4 years and the AO has neither alleged that there was failure on the part of the appellant to disclose fully and truly all the material facts for assessment and has nowhere stated in the reason recorded as to what material facts were not disclosed. This being a case of second reassessment order, the proviso to sec.147 of the Act is applicable. The reopening notice issued u/s.148 of the Act beyond the period" of 4 years from the end of the*

*relevant assessment year and the conditions prescribed having not, satisfied, the reopening of the assessment is held to be bad in law and is thereby quashed. The Hon'ble Bombay High Court in the case of Bombay Stock Exchange Ltd. v. DDIT (E) [2014] 365 ITR 160 (Bom) has held that reassessment proceedings cannot be permitted after a period of 4 years where original assessment order is passed u/s.143(3) or 147 where in the reasons recorded for reopening of the assessment no details are given by the AO as to which fact or material was not disclosed that led to income escaping assessment and mere bald assertion in the reasons that there was failure on the part of the assessee to disclose fully and truly all material facts is not enough and quashed the reassessment proceedings. In the facts of the present case of the appellant, the Ld. AO has not even alleged in the reason that there was failure on the part of the appellant to disclose fully and truly all material facts for assessment. Similar views are taken in the case of - Haryana Acrylic Manufacturing Co. v. CIT [2009] 308 ITR 38 (Del) wherein it is held that merely having reason to believe that income had escaped assessment, is not sufficient to reopen assessment beyond 4 years period. The escapement of income from assessment must also be occasioned by the failure on the part of the assessee to disclose material facts fully and truly. This is a necessary condition for overcoming the bar set up by the proviso to sec.147. The above principle was reiterated in the case of Global Signal Cables (India) P Ltd v. DCIT, W.P. (C) 747/2014, Del HC, order dated 17.10.2014. In the case of Sabharwal Properties Industries (P.) Ltd. v. ITO [2016] 382 ITR 547 (Del) it was held that where reasons recorded for reopening of assessment did not indicate failure by assessee to disclose fully and truly all material facts necessary for assessment, notice for reopening of assessment was liable to be quashed.”*

.....

*5.1.12 Considering the facts and submissions made and also the judicial precedents relied upon, I find that there is justification in the appellant's contention that in the reasons recorded for reopening of the assessment, the AO has not established any failure on part of the appellant to fully and truly disclose material facts nor has he given the details of the material facts which has not been fully and truly disclosed the notice dtd. 22/03/2016 issued by the AO under section 148 of the Act is bad in law is hereby quashed. This ground of appeal of the appellant is allowed.*

*5.2 As I have held that reassessment is bad in law, I do not find it necessary to decide other issues which are on merits of the case.”*

3.2. We find that the law is now well settled that the reasons recorded by the Id. AO should speak for itself by clearly stating the clear failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment in the return of income or in subsequent documents filed before the Id. AO during the course of assessment proceedings. There cannot be any addition or supply of words or deletion of words into the said reasons. The reasons recorded should be elaborate and should speak for itself about the action of the Id. AO for confirmation of belief that income has escaped assessment. The satisfaction of the Id. AO that income had escaped assessment should emanate from the reasons recorded at the time of initiation of re-assessment itself and the same cannot be ratified or strengthened by specific investigations or evidences. Whenever, the applicability of proviso to Section 147 comes into operation, as is prevailing in the instant case, there is an additional duty cast on the Id. AO to duly record the failure on the part of the assessee to fully and truly disclose the material facts relevant for the assessment. Admittedly, from the reasons recorded which have been reproduced hereinabove, there is absolutely no mention by the Id. AO regarding the failure on the part of the assessee to disclose the relevant information. Reliance in this regard is placed on the decision of Hon'ble Jurisdictional High Court in the case of Hindustan Liver Ltd., vs. ACIT reported in 268 ITR 332 (Bom). We find that the reasons recorded by the

Id. AO does not even mention about the first re-assessment that had already been framed by his predecessor on 31/03/2015 which fact also had been noticed by the Id CITA while quashing the re-assessment. This goes to prove the clear non-application of mind by the Id. AO while recording the reasons for reopening the assessment.

3.3. In view of the aforesaid observations, we find that the Id. CIT(A) was duly justified in quashing the re-assessment as *void ab initio* and hence, we do not find any infirmity in the said order. Accordingly, grounds raised by the revenue are dismissed.

**4. In the result, appeal of the revenue is dismissed.**

Order pronounced in the open court on this 11/09/2019

**Sd/-**  
**(RAM LAL NEGI)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 11/09/2019

KARUNA, *sr.ps*

**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.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai

