

IN THE INCOME TAX APPELLATE TRIBUNAL "A"
(Virtual Court Hearing), BENCH KOLKATA

BEFORE SHRI WASEEM AHMED, AM & MS. MADHUMITA ROY, JM

आयकर अपीलसं./I.T.A No.724/Kol/2018
(निर्धारण वर्ष / Assessment Year: 2009-10)

DCIT, Circle-10(2), Kolkata	Vs.	M/s V2 Retail Ltd. Plot- No.8, Pocket-2, Block-A, Rangpuri Extensions, NH-8, New Delhi-110037.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCV5632P		
(Appellant)	..	(Respondent)

C.O No.11/Kol/2020
(in I.T.A No.724/Kol/2018)
(निर्धारण वर्ष / Assessment Year: 2009-10)

M/s V2 Retail Ltd. Plot- No.8, Pocket-2, Block-A, Rangpuri Extensions, NH-8, New Delhi-110037.	Vs.	DCIT, Circle-10(2), Kolkata
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABCV5632P		
(Cross-Objector)	..	(Respondent)

Appellant by : Shri Manish Kanojia, DR
Respondent by : Shri K. K. Chhparia, FCA & Nirav Sheth, FCA

सुनवाईकीतारीख/ Date of Hearing : 11/11/2020

घोषणाकीतारीख/Date of Pronouncement : 16/12/2020

आदेश / O R D E R

Per Ms. Madhumita Roy:

The instant appeal filed by the Revenue and cross-objection filed by the assessee are against the order dated 25.01.2018 passed by the Commissioner of Income Tax (Appeals)-4, Kolkata arising out of the order dated 20.03.2015 passed

by the DCIT, Circle-10(2), Kolkata u/s 147/143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the Assessment Year 2009-10.

2. Since both the matters relate to the same assessee, these are heard analogously and are being disposed of by a common order.

3. At the very threshold of the matter, the Ld. Counsel appearing for the assessee raised objection on maintainability of the reassessment proceedings u/s 147/148 of the Act. It has been submitted by the Ld. Counsel appearing for the assessee that the final order u/s 147/143(3) of the Act was passed on the basis of the reasons recorded on 20.05.14 by the DCIT, Circle-10, Kolkata for the assessment year 2009-10 i.e. after the four years from the date of expiry of the relevant assessment year. If that be so, according to him, the DCIT should have recorded reasons with a specific allegation of failure on the part of the assessee to disclose fully and truly all material facts necessary for that assessment year in terms of 1st Proviso of Section 147 of the Act. In this regard, he has relied upon the reasons so recorded reflected at page 56 of the paper-book filed before us by the assessee which does not speak of any failure on the part of the assessee in disclosing fully and truly all material facts necessary for the assessment year in question. Thus the reassessment proceeding is bad in law and liable to be quashed as argued by the Ld. AR.

4. He relied upon the judgment passed by the Hon'ble Bombay High Court in the case of Hindustan Lever Ltd. vs. R.B. Wadkar reported in (2004) 268 ITR 332 (2004) (Bombay) and judgment passed by the Hon'ble Gauhati High Court in the case of Assam Co. Ltd. vs. Union of India reported in (2005) 275 ITR 609(Gauhati).

5. On the contrary, the Ld. DR relied upon the reasons so recorded on 20.03.14 as also reflected on the same at page 56 of the paper-book. According to him, since such recording of the reasons is within the time permissible under the Statute i.e.

within the four years from the date of completion of the relevant assessment year 2009-10, the assessment proceedings in maintainable in the eyes of law and therefore the consequences of the same i.e. the finalization of such proceedings cannot be questioned by the assessee at all.

6. We have heard the respective parties, we have also perused the relevant materials available on record. Since this ground of maintainability of the reassessment proceedings has been urged by the appellant, we would like to address the issue first. In this regard we have perused the order passed by the Ld. A.O and the reasons so recorded dated 20.03.14 within the statutory period reflected at page 56 of the paper-book which is as follows:

“The assessment u/s. 143(3) was completed on 08/12/2011. Subsequently, on perusal of the records, it is noticed that the assessee-company had shown decreased value of some stocks b Rs. 97.26 Crores keeping the quantity of the stocks intact. As a result, there was decrease in application of fund by Rs. 97.26 Crores. Consequently, it had effect on cash flow. As per cash flow statement, the increase of stock transaction was understated by the said sum of Rs. 97.26 Crores which resulted in shortfall of cash balance due to non-cash adjustment on account of revaluation. As such, the said amount of Rs. 97.26 Crores attracted the provisions of section 69A of the I. T. Act, 1961.

I have, therefore, reason to believe that the assessee-company's income chargeable to tax has escaped assessment by the said amount of Rs.97.26 Crores and this is a fit case for invocation of the provisions of the Section 147 of the I. T. Act, 1961. Accordingly, the provisions of section 147 are invoked and notice u/s. 148 is issued.”

7. We find that a second reason has been recorded by the A.O which is reproduced hereinbelow:

“The assessment proceeding for the year in question was reopened u/s. 147 of the I.T. Act, 1961 on 21/03/2014 for reasons recorded therein. Subsequently, information received from the Income Tax Officer, Ward-2(1), Ghaziabad that the assessee-company had engaged in bogus transactions with certain companies, details of which was forwarded to this office. It is found, on perusal of the details forwarded, that the total accommodation entry in the form bogus purchase from the said parties amounted to Rs.34,81,02,225/-. Therefore, I have reason to believe that the assessee-company's income chargeable to tax for the assessment year 2009-10 has escaped assessment to the tune of Rs.34,81,02,225/- in addition to the escapement of Rs. 97.26 crores for which the assessment in question was reopened on 21/03/2014. Accordingly, this issue is merged with the original issue for consideration in the re-assessment proceedings u/s. 147 of the

l. T. Act, 1961. It is reiterated once again that the reasons mentioned here is a part and parcel of reasons for reopening of the case of assessee for this year.

A Copy of the reason is forwarded to the assessee for information and necessary action.”

8. Thus, from the above reason recorded on 20.05.14, it appears that the issue which was raised therein has been marched with the earlier reason recorded on 21.03.14 for reopening of assessment and attained finality so far as the reasons recorded by the A.O is concerned. If that be so, the reason recorded on 20.05.2014 should be considered to be final and absolute reason recorded by the Ld. A.O for reopening the assessment for assessment year 2009-10. Further that no allegation is found to be made by the Revenue for not disclosing truly and fully all material facts necessary for the assessment year 2009-10 by the assessee. We would like to add that when the second reason was recorded on 20.05.14, the first reason dated 20.03.14 has lost its force. Had there been no latches on the part of the Revenue in recording reasons by issuing of the Memo on 20.03.14 there would have not been any necessity in issuing the further reason recorded on 20.05.14. Therefore the submission made by the Ld. Counsel appearing for the assessee that the proceeding itself has initiated on the basis of the reasons recorded on 20.05.14 is justified.

9. Now the moot point arises as to whether the subsequent notice dated 20.5.14 issued after the expiry of four years from the date of completion of the relevant assessment year has fulfilled the pre-condition as stipulated by the 1st Proviso of section 147 of the Act by the Revenue. It appears that the reason recorded on 20.05.2014 does not allege failure on the part of the assessee in disclosing fully and truly all material facts necessary for assessment for the assessment year 2009-10 which is the pre-condition stipulated by the 1st Proviso of section 147 of the Act since the said notice dated 20.05.14 has been issued after the expiry of the four years from the date of completion of the relevant assessment year. Thus, the proceeding initiated by the said reasons fails to have any basis rather not in

consonance with the Statutory provisions and thus liable to be quashed as argued by the Ld. A.R.

10. In this regard, we have considered the judgment passed by the Hon'ble Bombay High Court wherein it has been decided that in the absence of any reasons recorded by the A.O that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for that assessment year particularly when the notice was clearly beyond the period of four year, reassessment was bad in law, is barred by limitation. The relevant portion whereof is as follows:

"18. Having heard the parties at length, we are of the opinion that the petition can be disposed of on the first contention raised by the petitioner, wherein the petitioner has contended that the notice issued under Section 148 is without jurisdiction being hit by the proviso to Section 147 of the Act as such not within the prescribed period provided under the proviso to Section 147 of the Act. In the circumstances, it would be necessary to turn to Section 147 of the Act, which reads as under :

"147. Income escaping assessment -- If the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter-in this section and in Sections 148 to 153 referred to as the relevant assessment year) :

Provided that where an assessment under Sub-section (3) of Section 143 or this section has been made for the relevant assessment year, no action shall be taken under this section 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 make a return under Section 139 or in response to a notice issued under Sub-section (1) of Section 142 or Section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year."

19. Reading of the proviso to Section 147 makes it clear that if the Assessing Officer has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of Sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under Section 147, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the concerned assessment year. However, where an

assessment under Sub-section (3) of Section 143 has been made for the relevant assessment year, no action can be taken under Section 147 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 all material facts necessary for his assessment for that assessment year.

20. In the case in hand it is not in dispute that the assessment year involved is 1996-97. The last date of the said assessment year was March 31, 1997, and from that date if four years are counted, the period of four years expired on March 31, 2001. The notice issued is dated November 5, 2002, and received by the assessee on November 7, 2002. Under these circumstances, the notice is clearly beyond the period of four years.

21. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. The reasons are the manifestation of the mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide the link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish the vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing an affidavit or making an oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches the court, on the strength of the affidavit or oral submissions advanced.

22. Having recorded our finding that the impugned notice itself is beyond the period of four years from the end of the assessment year 1996-97 and does not comply with the requirements of the proviso to Section 147 of the Act, the Assessing Officer had no jurisdiction to reopen the assessment proceedings which were concluded on the basis of assessment under Section 143(3) of the Act. On this short count alone the impugned notice is liable to be quashed and set aside.”

11. We have also considered the judgment passed by the Gauhati Bombay High Court wherein relying upon the judgment passed by the Hon'ble Apex Court in the case of Parashuram Pottery Works Co. Ltd. vs. ITO [1977] 106 ITR 1(SC)

decided the matter in favour of the assessee. The relevant portion whereof is as follows:

“44. The apex court while dwelling on the scope of the requirement to disclose fully and truly all material facts as comprehended in the proviso to Section 147 held in Parashuram Pottery Works Co. Ltd. [1977] 106 ITR 1 (SC), that the duty of the assessee in any case does not extend beyond making a true and full disclosure of primary facts and it is not its responsibility to advise the Assessing Officer with regard to the inference which he should draw therefrom. If such officer draws any inference which appears to be subsequently erroneous, a mere change of opinion would not justify initiation of action for reopening the assessment, it held.

45. The same view was expressed in Associated Stone Industries [1997] 224 ITR 560 (SC). The Bombay High Court on the same issue in Hindustan Lever Ltd. [2004] 268 ITR 332, held that the reasons in support of the proposed action under Section 147 of the Act must necessarily reveal all facts or materials that had not been disclosed by the assessee fully and truly necessary for assessment so as to establish the link between the reasons and evidence. It was further held that the reasons so recorded cannot be supplemented by any affidavit or oral submissions as otherwise the reasons which were lacking in the material particulars would receive supplementation by the time those are subjected to court's scrutiny.

46. The notices admittedly do not exhibit as to what material facts were not truly and fully disclosed by the assessee necessary for assessment for the assessment years in question. The returns admittedly mention about the cess on green leaves paid and deductions as permissible were allowed. In view of the exposition of law on the point mentioned hereinabove, the inescapable conclusion is that the impugned notices in W. P. (C) No. 1163 of 2003 and W. P. (C) No. 1258 of 2003 are also not sustainable being barred by time.

47. In view of the conclusions reached hereinabove, which by themselves are determinative of the invalidity of the impugned notices, any dilation on the rival contentions bearing on the change of opinion of the concerned authority is unwarranted.”

12. Thus relying upon the ratio laid down by the Hon’ble Court including that of the Hon’ble Apex Court, we find no merit in the reasons recorded for reopening of assessment finally on 20.05.2014, in the absence of any allegation made by Revenue against the assessee for his failure to disclose truly and fully all relevant material facts for assessment for the year under consideration thereby failed to fulfil the pre-condition provided by the 1st Proviso of Section 147 of the Act. The entire proceeding of reassessment dehors the statute, is not maintainable in the eyes

of law and hence liable to be rejected. We, therefore, quash the reopening / reassessment proceedings initiated u/s 147/148 of the Act.

13. Since the proceedings initiated u/s 147/148 of the Act has been quashed by us, the cross-objection is not required to be considered. Hence it is dismissed.

14. In the result, the appeal of the Revenue and C.O of the assessee are dismissed.

Order is pronounced in the open court on 16.12.2020.

Sd/-
(Waseem Ahmed)
ACCOUNTANT MEMBER

Sd/-
(Madhumita Roy)
JUDICIAL MEMBER

कोलकाता /Kolkata;

दिनांक/ Date: 16/12/2020

RS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. The Appellant- DCIT, Circle-10(2), Kolkata
2. The Respondent- M/s V2 Retail Ltd.
3. आयकरआयुक्त(अपील) / The CIT(A), Kolkata [sent through email]
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, कोलकाता/ DR, ITAT, Kolkata [sent through email]
6. गार्डफाईल / Guard file.
सत्यापितप्रति

True Copy

By Order

Assistant Registrar,
I.T.A.T, Kolkata Benches,
Kolkata.