

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH: CHENNAI**

श्री धुव्वुरु आर.एल. रेड्डी, न्यायिक सदस्य एवं  
श्री एस. जयरामन, लेखा सदस्य के समक्ष  
**BEFORE SHRI DUVVURU R.L. REDDY, JUDICIAL MEMBER AND**  
**SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2839/Chny/2018  
निर्धारण वर्ष /Assessment Year: 2009-10

M/s. Mandovi Distilleries &  
Breweries Pvt. Ltd.,  
16, Zamindar Garden,  
Pondicherry-605 001.

v. The Dy. Commissioner of  
Income Tax,  
Pondicherry Circle,  
Pondicherry.

**[PAN: AACCM 9070 D]**  
**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by  
सुनवाई की तारीख/Date of Hearing  
घोषणा की तारीख/Dt. of Pronouncement

: Mr.D.Anand, Adv.  
: Mr.G. Chandrababu, Sr.DR  
: 10.12.2020  
: 22.12.2020

**आदेश / O R D E R**

**PER SHRI S. JAYARAMAN, ACCOUNTANT MEMBER:**

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals), Puducherry, in ITA No.11/CIT(A)-PDY/2016-17 dated 28.06.2018 for the AY 2009-10.

2. M/s.Mandovi Distilleries & Breweries Pvt. Ltd., the assessee, is engaged in manufacturing and sale of IMFL and generation of wind power. The assessee's assessment for the AY 2009-10 was scrutinized and the assessment was completed u/s.143(3) on 27.12.2009. Subsequently, the AO noticed that the assessee paid Rs.20,23,972/- on behalf of its principal,

M/s. United Spirits Ltd., and had debited it as bad debts advance. Since this debt is related to the assessee's principal and the assessee is still doing major business with its principal, the AO considered that the advance payment was not directly related to the assessee's business. Therefore, the AO issued notice u/s.148 on 05.12.2014 and completed the re-assessment by making a disallowance of bad debts written off. Aggrieved, the assessee filed an appeal before the CIT(A) and the Ld.CIT(A) dismissed the appeal. Aggrieved against that order, the assessee filed this appeal.

3. The case was heard through videoconferencing. The Ld.AR submitted that it is clear from the re-assessment order dated 31.03.2016 that the notice u/s.148 dated 05.12.2014 was issued to the assessee for re-opening the assessment of AY 2009-10, which was concluded u/s.143 dated 27.12.2019. Thus, the Ld.AR submitted that the AO issued notice u/s.148 for the AY 2009-10 on 05.12.2014, which is beyond four years from the end of the assessment year 2009-10. Inviting our attention to Para No.2 of the re-assessment Order passed u/s.143(3) r.w.s.147 dated 31.03.2016, the Ld.AR submitted that the AO re-opened the assessment based on the P&L A/c submitted before the AO at the time of original assessment. The AO examined on the same information and details submitted by the assessee during the original assessment proceedings and on due satisfaction completed the original assessment. Since, there is no fresh information/material in possession of the AO which could lead him to take a different conclusion, the Ld.AR submitted that the re-assessment is invalid

as it is initiated merely on a change of opinion. The Ld.AR submitted that though the jurisdictional issue was challenged before the Ld.CIT(A), the Ld.CIT(A) failed to note the fact correctly and wrongly held that the re-assessment was initiated within four years from the end of the Assessment Order. Therefore, the Ld.CIT(A) erred in dismissing the appeal and relied on the decision of the Hon'ble Supreme Court in the case of CIT v. Kelvinator of India reported in [2010] 320 ITR 561 (SC). Per contra, the Ld.DR supported the orders of the lower authorities.

4. We heard the rival submissions and gone through the relevant materials. The re-assessment made is related to the AY 2009-10. The AO completed the original assessment u/s.143(3) for this Assessment Year on 27.12.2011. For making the re-assessment, the AO issued a notice u/s.148 dated 05.12.2014, which is clearly beyond four years from the end of the AY 2009-10. Therefore, in this case, as per the first proviso of Sec.147, no action shall be taken u/s.147, unless any income chargeable to tax has escaped assessment for such assessment year by reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for that assessment year. It is clear from the Para No.2 of the re-assessment order dated 31.03.2016 that the AO re-opened the assessment u/s.147 based on the P&L A/c filed by the assessee before the AO during the original assessment only. Therefore, the assessee has disclosed the material facts etc., before the AO at the time of original assessment itself and on due satisfaction, the AO has completed the original assessment u/s.143(3).

Since, the AO has not recorded his satisfaction to the effect that there was any failure on the part of the assessee to disclose fully and truly all material facts, a condition which is sine qua none for reopening an assessment made u/s.143(3) after four years from the end of the relevant assessment year, it is clear that the re-assessment is initiated by a change of opinion, which is invalid in law, as canvassed by the assessee, supra, and hence, the re-assessment order passed u/s.143(3) r.w.s.147 dated 31.03.2016 is quashed.

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

Order pronounced on the 22<sup>nd</sup> day of December, 2020, in Chennai.

**Sd/-**  
(धुव्वुरु आर.एल. रेड्डी)  
**(DUVVURU R.L. REDDY)**  
न्यायिक सदस्य/**JUDICIAL MEMBER**

**Sd/-**  
(एस. जयरामन)  
**(S. JAYARAMAN)**  
लेखासदस्य /**ACCOUNTANT MEMBER**

चेन्नई/Chennai,  
दिनांक/Dated: 22<sup>nd</sup> December, 2020.  
TLN

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