आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'C' BENCH, CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 2834/CHNY/2019**

निर्धारण वर्ष /Assessment Year: 2011–12

The ACIT, Large Taxpayer Unit-2, Chennai – 34.	v.	**M/s. Rane Brake Lining Ltd.,** No.132, Cathedral Road, Gopalapuram, Chennai – 600 086. **PAN: AADCR 7688H**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri P. Sajit Kumar, JCIT,

प्रत्यर्थी की ओर से/Respondent by : Shri R. Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of Hearing : 21.02.2022

घोषणा की तारीख/Date of Pronouncement : 25.02.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-10, Chennai in ITA No.50(Tr.)/CIT(A)-10/2018-19, vide order dated 19.08.2019. The assessment was framed by the DCIT, LTU-1, Chennai for the relevant assessment year 2011-12 vide order dated 24.09.2018

u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter the 'Act').

2. At the outset, the ld.counsel for the assessee drew our attention to paper-book filed and he carried us through page 1. He referred to the petition under Rule 27 of the Income Tax Appellate Tribunal Rules, 1963 (hereinafter the 'Rules') that the assessee want to raise a legal issue which is decided by CIT(A) against the assessee. The ld.counsel for the assessee stated that the assessee before CIT(A) raised a specific ground and he took us through Form 35 filed with CIT(A) and relevant ground No.2, which is as regards to reopening of assessment u/s.147 of the Act. The relevant ground reads as under:-

> "1. The order of the Assessing Officer is contrary to law, facts and circumstances of the case and against the principles of natural justice.
> 2.1 The Assessing Officer erred in reopening initiating the reassessment proceedings as the reasons for reopening the assessment are unsustainable.
> 2.2 The Assessing Officer ought to have appreciated that there is neither reason to believe nor any escapement of income and hence reopening of the assessment is void.
> 2.3 The Assessing Officer ought to have considered that there is no fresh material evidences made available after the assessment proceedings and hence the reassessment is merely based on change of opinion.
> 2.4 The Assessing Officer erred in not appreciating the fact that the issue on provision for land leveling expenses was examined by the then Assessing Officer and only after being satisfied, had allowed the same while completing the assessment under section 143(3) of the Act.

2.5 The Assessing Officer erred in reopening the assessment after the expiry of four years from the end of the relevant assessment year is not valid as the Appellant had furnished fully and truly all the material facts necessary for the assessment.

2.6 The Assessing Officer erred in reopening the assessment merely on the basis of audit objection without appreciating the fact that reopening on the basis of audit objection cannot be said to be basis for the Assessing Officer's reason to believe.

The ld.counsel stated that CIT(A) upheld the reopening and on merits the issue is set aside by observing in para 3.7 of his order and the relevant portion of the para reads as under:-

"Even on merits, the addition appears to be unwarranted. As a result, while reopening under section 148 is upheld, the appeal of assessee on the issue of disallowance of amount set aside due to directions of Tamil Nadu Pollution Control Board the appeal is allowed and AO is directed to delete the addition made on this account."

The ld.counsel for the assessee stated that as the CIT(A) has decided the issue of reopening against the respondent assessee in his order, it want to support the order of CIT(A) on this legal issue of reopening. The ld.counsel for the assessee stated that the entire facts relating to this issue of reopening is very much available on the record of the AO as well as that of the CIT(A) and nothing new has tobe brought on record. When this was pointed out to ld.senior DR, he only opposed the petition filed under Rule 27 of the Rules but could not controvert the above stated factual situation and arguments.

3. After hearing rival contentions and going through the facts that a specific ground was raised before CIT(A) by the assessee and CIT(A) has dismissed this issue of reopening against the assessee, while allowing relief on merits for which Revenue is in appeal before us. Hence, we admit this petition moved by assessee under Rule 27 of the Rules and will adjudicate this jurisdictional issue first.

4. The ld.counsel for the assessee stated that the provision on the issue of reopening is as under, "whether the reopening by the AO u/s.147 of the Act is valid in the given facts and circumstances of the case that the original assessment was completed u/s.143(3) of the Act and notice u/s.148 of the Act was issued beyond 4 years despite the fact that there is no failure disclosed by the AO in the reasons recorded in regard to full and true disclosure of material facts necessary for assessee's assessment in the relevant assessment year 2011-12."

5. Brief facts are that for the relevant assessment year 2011-12, the original assessment was completed by DCIT, LTU-2, Chennai u/s.143(3) of the Act, vide order dated 27.02.2014. Subsequently, the AO recorded the reasons for reopening which was supplied to

the AO vide letter dated 26.06.2018 and the reasons read as under:-

> "As per the details available in the records, the assessee has filed the revised return of income on 29.03.2012, to deduct / reduce the expenditure of Rs.52,78,700/- added in the computation statement of income in the original return filed. It is seen from the details provided in the return of income, the company had kept the scrap and other materials at the Attipattu site for many years and in the year 2010, the Pollution Control Board (PCB) has directed the company to remove the scrap from the land vide its letter dated 27.01.2010. Accordingly, the assessee has made a provision of Rs.52,78,700/- being the expenses for leveling the land and removing the scrap in order to facilitate the land for industrial purposes. In this connection, it is pointed out that the direction given by the PCB has not been carried out by the company as on 31.03.2011, the assessee is intending to carry on the activity on a later date, however, the proposed expenditure was taken as ascertained liability and hence the provision made towards the same has been claimed as allowable expenditure. Since, the work was proposed to be taken up on a later date, and the expenditure proposed to be incurred has not crystallized, the same cannot be treated as ascertained liability and allowed as deduction.
> Therefore, I have reasons to believe that income escaped to the tune of Rs.52,78,700/-."

The AO framed reassessment order and assessee challenged first before the CIT(A) and now before the Tribunal.

6. The assessee before us pointed out from the reasons that AO noted from the records of the assessment that the company had kept the scrap and other materials at the Attipattu site for many years and in the year 2010, the Pollution Control Board (PCB) directed the company to remove the scrap from the land vide its

letter dated 27.01.2010 and accordingly, assessee made provision for the expenses for leveling the land and removing the scrap in order to facilitate the land for industrial purposes for an amount of Rs.52,78,700/-. According to the AO, the directions given by the PCB has not been carried out by the assessee company as on 31.03.2011 and provision was made towards the same and claimed in this assessment year as allowable expenditure. According to AO, this expense was not been utilized and the same cannot be treated as ascertained liability and hence not allowable and AO during the original assessment proceedings have wrongly allowed and for this reason, income has escaped assessment to the tune of Rs.52,78,700/-. The ld.counsel stated that during the course of original assessment proceedings, the DCIT vide letter dated 12.02.2014, which is enclosed in assessee's paper-book at page 6, called for the details and the relevant questionnaire at (f) reads as under:-

> f) Detailed breakup of the expenses under the head 'Provision for leveling the land' at Attipattu. Also explain, how such provision made is an ascertained liability."

The ld.counsel further drew our attention to the reply submitted by the assessee dated 20.02.2014 and the relevant point at 6, the reply detailed as under:-

> 6. Details of expenses under the head provision for leveling the land at Attipattu: The Company had been keeping the production scrap and other materials at the specified site for many years. In the year 2010, Pollution Control Board directed the company to remove the production scrap from the land and directed the company to dispose the same as per its directions in its Authorization No.397/04 dated 27th January, 2010. The copy of the letter is enclosed in Annexure 5. Accordingly, the company made a provision of Rs.52,78,700 being the expenses for leveling the land after removing the production scrap in order to facilitate the land for industrial purpose. The provision made being an ascertained liability is an allowable expenditure under the Income Tax Act.

6.1 The ld.counsel stated that once the AO has put a query and this was replied, the AO being satisfied allowed the claim of assessee and assessee has filed complete particulars in regard to claim of this expense for leveling the land after removing the production scrap in order to facilitate the land for industrial purpose. The ld.counsel for the assessee stated that in the reasons recorded by the AO, as noted above, there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the relevant assessment year 2011-12. The notice issued by the AO u/s.148 of the Act is dated 28.03.2018 and the relevant assessment year involved is 2011-12, it means that the notice is issued beyond 4 years. The original assessment was also completed u/s.143(3) of the Act by the AO vide order dated 27.02.2014. The ld.counsel for the assessee stated that once the assessee's case falls under first proviso to

section 147 of the Act, the reassessment is clearly illegal and bad in law.

7. Contra, the ld.senior DR could not controvert the above factual situation but he relied on the reassessment order and the order of CIT(A). He stated that the expenses claimed by the assessee for leveling charges of land and provision made towards the same has not been crystallized and the same cannot be treated as ascertained liability and cannot be allowed, which was wrongly allowed by the AO and thereby the income has escaped assessment. He supported the reasons recorded by the AO.

8. We have heard rival contentions and gone through the facts and circumstances of the case. We noted from the above facts which we need not to repeat that assessee has made full and true disclosure in regard to the expenses claimed by the assessee towards leveling charges of land after removing scrap and land was prepared for industrial use. Admittedly, notice u/s.148 of the Act for reopening of assessment was beyond 4 years and from the reasons noted above, we could not find that there is any failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the relevant assessment year. In

such situation, we rely on the decision of Hon'ble Supreme Court in the case of CIT vs. Foramer France, (2003) 264 ITR 566, wherein the Hon'ble Supreme Court has affirmed the decision of Hon'ble Allahabad High Court in the case of Foramer France vs. CIT, (2001) 247 ITR 436 and held as under:-

> 14. Having heard learned counsel for the parties, we are of the view that these petitions deserve to be allowed.
>
> 15. It may be mentioned that a new Section substituted Section 147 of the Income-tax Act by the Direct Tax Laws (Amendment) Act, 1987, with effect from April 1, 1989. The relevant part of the new Section 147 is as follows : "147. 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."
>
> 16. This new Section has made a radical departure from the original Section 147 inasmuch as clauses (a) and (b) of the original Section 147 have been deleted and a new proviso added to Section 147.
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> 17. In Rakesh Aggarwal v. Asst. CIT (1997] 225 ITR 496, the Delhi High Court held that in view of the proviso to Section 147 notice for reassessment under Section 147/148 should only be issued in.accordance with the new Section 147, and where the original assessment had been made under Section 143(3) then in view of the proviso to Section 147, the notice under section

148 would be illegal if issued more than four years after the end of the relevant assessment year. The same view was taken by the Gujarat High Court in Shree Tharad Jain Yuvak Mandal v. ITO [2000] 242 ITR 612.

18. In our opinion, we have to see the law prevailing on the date of issue of the notice under Section 148, i.e., November 20, 1998. Admittedly, by that date, the new Section 147 has come into force and, hence, in our opinion, it is the new Section 147 which will apply to the facts of the present case. In the present case, there was admittedly no failure on the part of the assessee to make a return or to disclose fully and truly all material facts necessary for the assessment. Hence, the proviso to the new Section 147 squarely applies, and the impugned notices were barred by limitation mentioned in the proviso."

8.1 Furthermore, the Hon'ble Madras High Court in the case of CIT vs. RPG Transmissions Ltd., [2014] 48 taxmann.com 57, held as under:-

"22. We find from the reasons set out in the assessment orders that the assessee has explained an disclosed the entire facts which would constitute a full disclosure and, therefore, we have no hesitation to hold that the reopening of assessment is barred by the proviso to section 147. Further, the facts which emerge from the assessment order as well as the order of Commissioner of Income-tax(Appeals) are well founded and in terms of the principles laid down by the apex court. For the aforesaid reasons, we find that the Tribunal has correctly appreciated the facts in holding that the reopening of the assessment orders are barred by limitation. We find that the Commissioner of Income-tax (Appeals) as well as the Tribunal has concurrently held from the facts that the proviso to section 147 would not apply to the facts of this case and since it is a finding of fact that too which is essentially based on the principles which are gathered from the judgments referred to above, we find that the Assessing Officer has departed from the said principles in arriving at a conclusion that the proviso to section 147 would apply in the instant case. We see no reason to deviate from the finding of fact and, hence, the appeal of the Revenue fails on this ground. Therefore, the first part of the substantial question of law No. 1 in T. C. (A.) Nos. 310 to 312 of 2007 with regard to the invocation of extended period of time under the proviso to section 147 is answered in the affirmative and in favour of the assessee."

9. In view of the above, we quash the reassessment on reopening and hence, this issue of assessee's petition under Rule 27 is allowed.

10. Coming to Revenue's appeal, since we have quashed the reassessment on reopening, we need not to go into other aspects. Therefore, the appeal of the Revenue is dismissed.

11. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the court on 25th February, 2022 at Chennai.

Sd/-	Sd/-
(मनोज कुमार अग्रवाल)	(महावीर सिंह)
(MANOJ KUMAR AGGARWAL)	**(MAHAVIR SINGH)**
लेखा सदस्य /ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 25th February, 2022

RSR
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.