

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.:2666/CHNY/2018
निर्धारण वर्ष /Assessment Year: 2008 - 2009

(Late) Smt. Geetha Vasam,
Rep. By Legal Heir Shri M.G. Vasam,
Shri M. G. Vasam,
Old No.157, New No.48,
Luz Church Road, Mylapore,
Chennai - 600 004.

PAN : AEGPG 0456C

(अपीलार्थी/Appellant)

The Income Tax Officer,
Vs. Non-Corporate Ward -16(3),
Chennai - 600 034.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by
प्रत्यर्थी की ओर से/Respondent by

: Mr. S. Sridhar, Advocate
: Mr. ARV. Sreenivasan, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 06.04.2022
घोषणा की तारीख/Date of Pronouncement : 11.04.2022

आदेश /O R D E R

PER MAHAVIR SINGH, VP:

This appeal by the Assessee is arising out of the order of the Commissioner of Income Tax (Appeals)-4, Chennai in I.T.A. No.31/2016-17/A.Y.2008-09/CIT(A)-4, dated 06.08.2018. Reassessment was framed by the Income Tax Officer, Non-Corporate Ward - 16(3) for the Assessment Year 2008 - 2009 u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter 'the Act'), vide order dated 31.03.2016.

2. The first issue in this appeal of the Assessee is as regards to assumption of jurisdiction and validity of re-assessment without appreciating in the reasons recorded 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, although the assessment was completed u/s.143(3) of the Act and reopening is done beyond four years.

3. Brief facts are that the Assessee filed her return of income for the Assessment Year 2008 – 2009 on 05.01.2009 and the assessment was completed originally u/s.143(3) of the Act vide order dated 30.12.2010. Subsequently, the case was reopened u/s.147 of the Act by issuing notice u/s.148 of the Act dated 31.10.2014. In response to this notice, the Assessee filed return of income on 23.12.2014 and required the Assessing Officer to inform the reasons for reopening the assessment. The Assessing Officer vide letter dated 14.10.2015 (copy of which is enclosed in the Assessee's paper-book at page no.3) which reads as under:

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"To

Smt. Vasan Geetha,
Old No.157, New No.48,
Luz Church Road, Mylapore,
Chennai – 600 004.

Sir / Madam,

Sub: Income Tax re-opened assessment -
Assessment Year 2008-09 - your own -
reg.

Ref: Notice u/s.142(1), dated 27.08.2015 and
your letter dated 28.09.2015.

This has reference to the above.

The Assessment for the Assessment Year 2008-09 has been re-opened for the reason that "the Assessee has failed to disclose fully and truly all material facts necessary for Assessment".

In this connection, you are hereby required to furnish / produce all the details and documents as required by our above Notice under Section 142(1) of the Income Tax Act, 1961 without any further delay.

Yours faithfully,

(V.P. SELVI)
Income Tax Officer
Non-Corporate Ward 16(3)
Chennai - 34."

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As noted above, admittedly, for the assessment year 2008 - 2009, the original assessment was completed u/s.143(3) of the Act vide order dated 30.12.2010. A notice u/s.148 of the Act was issued on 31.10.2014 which is beyond four years and the Assessee's case falls under the Proviso to Section 147 of the Act.

4. In such circumstances, the learned Counsel for the Assessee took us through the reasons supplied by the Assessing Officer and the reasons states that "*the Assessee has failed to disclose fully and truly all material facts necessary for Assessment*". The learned Counsel stated that there is no reason recorded for any failure of the Assessee to disclose fully and truly any material facts necessary for

her assessment for this assessment year, on which income and on what account. According to the learned Counsel, there is no reason at all and hence the assessment on the very threshold be quashed.

5. When these facts were confronted to the learned Senior Departmental Representative, he could not rebut the same.

6. We have heard the rival contentions and gone through the facts and circumstances of the case. Admittedly, the Assessee's case falls under the Proviso to Section 147 of the Act and the Revenue could not show any failure on the part of the Assessee to disclose fully and truly all material facts necessary for the Assessee's assessment for the relevant assessment year. Once, there is no failure, the Assessee's case is squarely covered by the decision of the Hon'ble Supreme Court in the case of CIT vs. Foramer France, [2003] 264 ITR 566, wherein the Supreme Court affirming the decision of Hon'ble Allahabad High Court in the case of Foramer France vs. CIT, [2001] 247 ITR 436 has 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.

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."

In view of the above facts and circumstance of case law of Hon'ble Supreme Court in the case of M/s. Foramer France *supra*, we are of the view that there is no whisper in the reasons recorded that there is any failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment and the assessment was framed u/s.143(3) of the Act and reopening beyond four years which is against the provisions of the Act.

7. In the result, the appeal of the Assessee is allowed.

Order pronounced in the court on 11th April, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

(MANOJ KUMAR AGGARWAL)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 11th April, 2022

IA, Sr. PS

आदेश की प्रतिलिपि ँ ग्रेषित/**Copy to:** 1. ँ पीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (ँ पील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF