

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 PRESIDENT AND  
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A No.:2972/CHNY/2018

निर्धारण वर्ष/ Assessment Year 2009 - 2010

The DCIT,  
Corporate Circle – 1 (1),  
Chennai – 600 034.

(अपीलार्थी/**Appellant**)

M/s. Ashok Leyland Limited,  
[Successor of M/s. Ashok Leyland  
Project Services Limited,  
No.1, Sardar Patel Road,  
Guindy, Chennai – 600 032.  
**PAN : AAACA 4651L**

(प्रत्यर्थी/**Respondent**)

&

**Cross Objection No.02/CHNY/2019  
(in ITA No.2972/CHNY/2018)  
Assessment Year 2009 - 2010**

M/s. Ashok Leyland Limited,  
[Successor of M/s. Ashok Leyland  
Project Services Limited,  
No.1, Sardar Patel Road,  
Guindy, Chennai – 600 032.

**PAN : AAACA 4651L**

(अपीलार्थी/**Appellant**)

The DCIT,  
Corporate Circle – 1 (1),  
Chennai – 600 034.

(प्रत्यर्थी/**Respondent**)

राजस्व की ओर से /Revenue by : Shri P. Sajit Kumar, JCIT  
निर्धारिती की ओर से/Assessee by : Shri Vikram Vijayaraghavan, Advocate

सुनवाई की तारीख/Date of Hearing : 08.09.2022

घोषणा की तारीख/Date of Pronouncement : 08.09.2022

**आदेश / O R D E R**

**PER MAHAVIR SINGH, VP:**

This appeal by the Revenue and cross objection by the assessee is arising out of the order passed by the Commissioner of Income Tax (Appeals)-1, Chennai in Appeal No.ITA No.140/CIT(A)-1/2017-18 dated 31.07.2018. The assessment was framed by the Deputy Commissioner of Income Tax, Corporate Circle – 1(1), Chennai for the Assessment Year 2009 - 2010, u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter "the Act") vide order dated 29.12.2017.

2. The first common issue in this appeal of Revenue and cross objection raised by assessee is as regards to the order of CIT(A) quashing the re-assessment framed by AO u/s.147 r.w.s 148 of the Act. For this Revenue has raised following effective grounds:-

2. The learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the first notice under section 148 of the Act in the present case was issued on 26.03.2014 to "M/s. Ashok Leyland Project Services Limited", a purportedly non-existent entity and accordingly withdrawn by the Assessing Officer on 31.03.2015.

3. The learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the impugned second notice under section 148 of the Act in the present case was issued on 30.03.2016 to "M/s. Ashok Leyland Project Services Limited" (succeeded by M/s. Ashley Services Limited and subsequently by M/s. Ashok Leyland Limited", an entity that had assumed the place of the Assessee company by way of a merger.

4. The learned Commissioner of Income Tax (Appeals) erred in not appreciating the fact that the Assessee did not raise any objection as to the re-assessment proceedings initiated vide notice under section 148 dated 30.03.2016 during the proceedings and complied with notices accordingly and that the Assessee is barred by Section 292BB of the Act from disputing the proceedings, now.

3. The assessee in its cross objection has raised following grounds:-

1. Initiated Beyond 4 years: The order of the Commissioner of Income tax (Appeals) ought to have held that the reopening was bad in law as the initiation of proceedings was beyond 4 years from AY 2009-10 for which an assessment u/s 143(3) was already made.

2. All material facts disclosed, no new material on record: The order of the Commissioner of Income Tax (Appeals) ought to have appreciated that in absence of any failure on part of Appellant to disclose material facts, reopening of assessment beyond 4 years is impermissible and hence, requires to be stuck down.

3. Reopening procedure not followed: The Order of the Commissioner of Income Tax (Appeals) ought to have appreciated that the AO erred in not disposing objections for reassessment raised by Appellant and hence, failed to adhere to guiding principles laid down by the Supreme Court in GKN Driveshafts (India) Ltd. vs. ITO (2003) 259 ITR 19 (SC)

4. We have heard rival contentions and gone through facts and circumstances of the case. Brief facts are that the assessee group concern Ashok Leyland Project Services (ALPS) merged with Ashley Services Ltd., and subsequently Ashley Services Ltd., was merged with Ashok Leyland Limited, the present assessee in financial year 2013-14 and relevant to assessment year 2014-15. ALPS was engaged in the

business of carrying out management consultancy, co-ordination and advisory to companies in respect of implementation and promotion of projects. ALPS filed its return of income for the assessment year 2009-10 on 29.09.2009. The Assessment was completed u/s.143(3) of the Act in the case of ALPS vide order dated 15.12.2011 making addition under MAT provisions by making certain disallowances. ALPS filed a rectification petition u/s.154 of the Act. Subsequently, notice u/s.148 of the Act dated 26.03.2014 proposing to reopen the assessment for assessment year 2009-10 was issued in the name of ALPS. The AO vide letter dated 14.01.2015 submitted reasons recorded and the relevant reason as enclosed in assessee's paper-book page 2 reads as under:-

“For the AY 2009-10, it is seen from the Profit and Loss Account for the year ended 31<sup>st</sup> March 2009 that under “Expenditure”, the assessee has debited a sum of Rs.89,92,653/- towards advances written off. The above expenditure is capital in nature and hence the same is to be capitalized and cannot claimed as revenue expenditure. As such the claim of the assessee is not in order and therefore prima facie, there is an escapement of income to the extent of Rs.89,92,653/-.

Based on the above facts and the failure of the assessee to fully and truly disclose the material facts, income chargeable to tax has escaped assessment within the meaning of Section 147 of IT Act, 1961.”

4.1 It is to be clarified here that prior to the issue of notice u/s.148 of the Act, ALPS merged with Ashley Services Limited and subsequently ALPS has ceased to exist on the date of issue of notice

u/s.148 of the Act. The AO, vide letter dated 02.02.2015 was informed by Ashok Leyland Limited, the assessee company, that, the ALPS got merged with the assessee company Ashok Leyland Limited. Subsequently, the assessee filed objection to this notice on 02.02.2015 and 10.03.2015 on merits and on jurisdictional grounds, on the basis of which, the proceedings were dropped and no assessment order concluding the proceedings was passed by the AO within the statutory time limit prescribed for completion of re-assessment. Subsequently, another reassessment notice u/s.148 of the Act dated 30.03.2016 was issued on the same issue which was mentioned as reason for reopening in the notice issued dated 26.03.2014 and reasons were supplied on 29.04.2016 and the reason supplied vide this letter reads as under:-

“2. The reasons sought for re-opening of the assessment in your case for the AY 2009-10 is furnished as under:-

“For the AY 2009-10, in the assessment completed under scrutiny, the total income of the assessee was determined at Rs.8014078/- after adjusting a carry forward loss of Rs.103209880/- against the total income. However, a book profit of Rs.82034308/- was brought to tax u/s 155JB. In the revision made u/s 154 on 1-3-2012, the total income taxable under normal provisions of the Act was redetermined at Rs.1118353/- and the book profit taxable u/s 115JB was enhanced to Rs.82120700/-.

It is observed from the Profit and Loss Account for the year ended 31<sup>st</sup> March 2009 that under “expenditure”, the assessee has debited a sum of Rs.8992653/- towards advances written off. In the statement of computation of income, the above expenditure was omitted to the disallowed.”

Therefore, I have definite reason to believe that income to the tune of Rs.8992653/- has escaped assessment.”

4.2 The assessee objected to reopening of notice u/s.148 of the Act again vide letter dated 17.05.2016 and the text of the relevant letter reads as under:-

1. We are in receipt of your letter dated 29.04.2016 providing the reasons for reopening of assessment u/s 148 of the Act. As per the said letter, we understand that the assessment is proposed to be reopened for disallowance of Rs. 89,92,653 debited to Profit and Loss account towards advances written off.

2 We submit that the reasons cited in your letter dated 29.04.2016 is the same as the reasons for reopening provided to us vide letter dated 14.01.2015 when the assessment for the subject AY was earlier reopened vide notice u/s 148 dated 26.03.2014.

3. We had filed our objections to the said reassessment notice u/s 148 vide our letters dated 02.02.2015, 10.03.2015 and 24.03.2015 (enclosed as Annexure-A), wherein we had relied upon the decision of the Hon'ble Delhi High Court in the case of M/s. Indo Rama Synthetics (I) Ltd. v. Commissioner of Income-tax, reported in [2009] 185 TAXMAN 277 (DELHI), holding that expenditure incurred on a project is an allowable expenditure under Section 37. Based on our objections, no further action has been taken. As per our understanding, the reassessment proceedings were dropped and no orders were issued.

4. Now a fresh notice has been issued on the same grounds for the subject AY which is incorrect when the original reassessment proceedings has been dropped on merits. Hence, we strongly object to your proposal to initiate another reassessment proceedings on the same issue.

5. We now request you to drop the second reassessment proceedings based on the submissions on merit which were made before you earlier.

4.3 It is to be clarified that the AO was very much aware about issuance of notice in the name of Ashok Leyland Projects Services Ltd.,

i.e., ALPS even though it was merged with the assessee company Ashok Leyland Limited and the AO referred in letter dated 29.04.2016 as under:-

“To  
The Principal Officer  
M/s. Ashok Leyland Project Services Limited  
(Succeeded by M/s. Ashley Services Ltd and  
Subsequently by M/s. Ashok Leyland Ltd)  
No.1, Sardar Patel Road  
Guindy  
Chennai – 600 032.”

4.4 The AO has not considered any of the objections in its assessment order and framed assessment u/s.143(3) r.w.s. 147 of the Act vide order dated 29.12.2017. Aggrieved, assessee preferred appeal before CIT(A).

5. The CIT(A) quashed the assessment on reopening by observing in para 10 as under:-

“10. In the light of the above principles laid down by the jurisdictional High Court and the fact that the reasons recorded in both the notices pertained to the same issue, the issue of second notice for the same ground is held to be invalid. For this reason alone, the ground of appeal is allowed.”

5.1 As regards to the merits of the case, the CIT(A) dismissed the ground of appeal. Aggrieved, Revenue as well as assessee came in appeal and cross-objection.

6. The first ground raised by assessee in its cross objection is that the reopening initiated beyond 4 years and even though, the original assessment was completed u/s.143(3) of the Act and there is no failure pointed out by the Revenue in the reasons recorded as regards to non-disclosure of fully and truly material facts for framing of assessment, the reopening is bad in law. Admittedly, the assessment year involved in 2009-10 and notice (impugned notice issued u/s.148 of the Act is dated 30.03.2016) is beyond 4 years from the relevant assessment year and hence, attracts first proviso to section 147 of the Act. Now, we will go through the reasons recorded in the reason, i.e., for the assessment year 2009-10 the assessment was completed under scrutiny u/s.143(3) of the Act and income was determined at Rs.80,14,078/- after adjusting carry forward loss of Rs.10,32,09,880/-. However, the book profit of Rs.8,20,34,308/- was brought to tax u/s.115JB of the Act. In the rectification made u/s.154 of the Act on 01.03.2012, the total taxable income under normal provisions was revised at Rs.1,11,18,353/- and the book profit was enhanced u/s.115JB of the Act to Rs.8,21,20,700/-. The AO recorded the reason, in view of the above that he noticed from the profit and loss account filed for the year ended 31<sup>st</sup> March, 2000 that under

'expenditure', the assessee has debited a sum of Rs.89,92,653/- towards advance written off is to be disallowed as capital in nature. We have gone through the reasons recorded and supplied to assessee vide letter dated 29.04.2016, as reproduced above, that the AO has nowhere pointed out 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 2009-10. Admittedly, the original assessment was completed u/s.143(3) of the Act, as noted by the AO for the reasons recorded for assessment year 2009-10 and beyond 4 years or after expiry of 4 years in the absence of any failure on the part of the assessee to disclose fully and truly all material facts for its assessment, the reopening cannot be validly done. This issue has been dealt by Hon'ble Supreme Court in the case of CIT vs. Foramer France, (2003) 264 ITR 566, wherein the Supreme Court has affirmed the decision of Hon'ble Allahabad High Court in the case of Foramer France vs. CIT, (2001) 247 ITR 436 by observing 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."

6.1 In the absence of any failure on the part of the assessee to disclose fully and truly all material facts and assessment framed u/s.143(3) of the Act and now reopening beyond 4 years is not permissible and hence, we affirm the order of CIT(A) quashing the

reopening although, on different facet. Since we have quashed the reopening, we need not go into other facets of reopening as well as on merits. Therefore the cross objection filed by the assessee is allowed and the appeal of the Revenue is dismissed.

7. In the result, the appeal filed by the Revenue in ITA No.2972/CHNY/2018 is dismissed and the Cross Objection filed by the assessee in CO No.2/CHNY/2019 is allowed.

Order pronounced in the open court on 8<sup>th</sup> September, 2022 at Chennai.

Sd/-

(मनोज कुमार अग्रवाल)

**(MANOJ KUMAR AGGARWAL)**

लेखा सदस्य /ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated, the 8<sup>th</sup> September, 2022

Sd/-

(महावीर सिंह)

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|-------------------------|------------------------------|
| 1. निर्धारिती/Assessee | 2. राजस्व/Revenue       | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त /CIT    | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF.            |