

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. Nos.2011 & 2012/Chny/2019
निर्धारण वर्ष/Assessment Years: 2009-10 & 2010-11

The Deputy Commissioner of
Income Tax, Corporate Circle 1(2),
Chennai 600 034.

Vs. M/s. Chennai Radha Engineering
Works Pvt. Ltd., No. 40, Sapthagiri
Colony, K R Layout, Jafferkhanpet,
Chennai 600 083.
[PAN:AACCC6068R]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri P.Sajit Kumar, JCIT
प्रत्यर्थी की ओर से/Respondent by : Shri T. Banusekar, C.A.
सुनवाई की तारीख/ Date of hearing : 24.11.2022
घोषणा की तारीख /Date of Pronouncement : 31.01.2023

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

Both the appeals filed by the Revenue are directed against the common order of the Id. Commissioner of Income Tax (Appeals) 1, Chennai, dated 29.03.2019 relevant to the assessment years 2009-10 and 2010-11. Considering the common ground raised in both the assessment years, the appeals were heard together and being disposed off by this common order for the sake of brevity.

2. Both the appeals filed by the Revenue are delayed by two days in filing the appeal, for which, the Revenue has filed petitions for

condonation of the delay, to which; the Id. Counsel for the assessee has not raised any serious objection. Consequently, since the Revenue was prevented by sufficient cause, the delay of two days in filing of the appeals stands condoned and the appeals are admitted for adjudication.

3. Facts are, in brief, that the assessee is a company, engaged in the business of manufacturing of components & spares for conveyer systems and filed its return of income for the assessment year 2009-10 on 30.09.2009 admitting total income of ₹.8,40,88,420/-. The case was selected for scrutiny and notice under section 143(2) of the Income Tax Act, 1961 ["Act" in short] was issued on 20.08.2010. Subsequently, after obtaining the final accounts, audit report and other records, notice under section 142(1) of the Act dated 09.11.2011 was also issued. In response to the same, the AR of the assessee appeared before the Assessing Officer and provided complete set of details as required by notice under section 142(1) of the Act. After examining the details furnished by the assessee, the Assessing Officer has completed the assessment under section 143(3) of the Act dated 16.12.2011. Subsequently, the Assessing Officer issued a notice under section 148 of the Act on the ground that the assessee has claimed depreciation at 30% and the same was allowed by the Assessing Officer, whereas, the assessee is only eligible for 15% and

thereby, there is an escapement of income. By calling the explanation of the assessee, the Assessing Officer has completed the assessment under section 143(3) r.w.s. 147 of the Act dated 02.11.2016 by disallowing excess depreciation claimed by the assessee for the assessment year 2009-10.

4. On appeal before the Id. CIT(A) for the assessment year under consideration, the assessee has challenged reopening of assessment. The Id. CIT(A), by considering the entire facts of the case and case law, quashed the reassessment proceedings and on merits also, the Id. CIT(A) deleted the addition made by the Assessing Officer.

5. Aggrieved, the Revenue is in appeal and raised common grounds for both the assessment years and the revised concise of grounds of appeal are reproduced as under:

1. The order of Ld. CIT(A) is contrary to law, facts and circumstances of the case.

2.1 The Ld. CIT(A) erred in quashing the re-assessment proceedings by relying on the decision of the Apex Court in the case of CIT vs. Lucas TVS Ltd (2001) especially when new material fact was brought on record that the assessee had claimed higher rate of depreciation on site equipment without being in the business of transportation of goods on hire.

2.2. The Ld. CIT(A) erred in quashing the reassessment proceedings in the light of the decision of the Hon'ble Supreme Court in the case of M/s. P.V.S. Beedies (P) Ltd vs. CIT in CA No.1564-65 of 1987 dt. 01.10.1997 and decision of the Hon'ble Jurisdictional High Court in the case of M/s. Sword Global India (P) Ltd vs. ACIT, Co. Circle VI(4) in WP No.1738 of 2015 dt. 15.07.2015.

3.1 *The Ld. CIT(A) erred in allowing higher rate of depreciation on site equipment without appreciating the fact that the asset block consist of JCB Crane, Pay Loader, Tractor, Winger also which cannot be considered as motor lorries for transportation of goods on hire.*

3.2 *The Ld. CIT(A) erred in holding that the assessee is in the business of transportation of goods on hire and allowing the higher rate of depreciation onsite equipment in view of the CBDT Circular No.652 dt. 14.06.1993 without appreciating the fact that in the Article of Association of the Company it is specified that the company is engaged in the business of handling, loading, unloading and transportation of all type of cargo including coal and it does not specify that the company is engaged in the business of running vehicles on hire and also failed to appreciate the decision of the Hon'ble High Court Kerala in the case of N.D. Joseph vs. CIT in ITA No.672 of 2009 dt. 11.01.2010.*

4. *For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the Ld. CIT(A) be set aside and that of the AO restored."*

The Id. DR has submitted that the Assessing Officer has not called for any details in respect of the claim of depreciation and not examined the issue. Therefore, the Assessing Officer has subsequently reopened the assessment under section 147 of the Act and issued notice under section 148 of the Act is valid and in accordance with law.

6. The Id. DR has further submitted that as per section 143(2) of the Act, the assessee has to file all the details and no details are filed in respect of fixed assets and also submitted that as per explanation of sub-section (1) to section 148 of the Act, it is a clear case of escapement of income. Thus, the reopening of assessment is valid.

7. On the other hand, the Id. Counsel for the assessee has submitted that the Assessing Officer has completed the assessment under section 143(3) of the Act dated 16.12.2011 after examining all the details. He also submitted that reopening of assessment is invalid, which is beyond four years for the reason that there is no failure on the part of the assessee to disclose all the details. The Id. Counsel pointed from paper book page 4 that the Assessing Officer has issued notice under section 143(2) of the Act dated 20.08.2010 calling all the details in respect of the claim made by the assessee. He further submitted that the Assessing Officer asked the assessee to produce fixed assets schedule as per the provisions of Income Tax Act (paper book page No. 6) and also annual reports such as Directors report, tax audit report in form 3CB/3CD along with annexures, balance sheet along with breakup of schedules, profit and loss account along with breakup of schedules, etc. He also pointed out from paper book page 8, in response to notice under section 143(2) of the Act dated 09.11.2011, Proof of addition to fixed assets at S. No.5 and Fixed Assets Schedule as per the provisions of Income Tax Act S. No.18 have been filed by the assessee before the Assessing Officer. He also pointed out from paper book page 10, a letter dated 15.11.2011, S. No. 4 page No. 11, which shows that the C.A. of the assessee has filed the details of addition to fixed assets i.e., copy of fixed assets schedule with addition,

deletion, depreciation and closing written down value (WDV) along with the copies of invoices for the fixed assets purchased during the year.

7.1 The Id. Counsel has further submitted that, the Assessing Officer, when reopened the assessment, he has not mentioned any specific reasons that there is a failure on the part of the assessee to disclose all the particulars for completing the assessment. The Assessing Officer has simply recorded that there is failure on the part of the assessee to disclose all the details to complete the assessment and therefore, the notice issued by the Assessing Officer beyond four years, which is invalid and the notice issued by the Assessing Officer should be quashed.

8. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. In this case, the Assessing Officer has completed the assessment under section 143(3) of the Act dated 16.12.2011. Subsequently, the assessment was reopened on the ground that there is an escapement of income i.e., the assessee has claimed depreciation on "equipment at site" at 30% instead of 15% and at the time of scrutiny assessment proceedings, details pertaining to the claim of depreciation were not made available. Detailed reasons for reopening were supplied to the assessee vide letter dated 11.08.2016. From the reasons furnished by the Assessing Officer, the case of the

Department is that the assessee is eligible to claim depreciation @ 15% and whereas, the assessee has claimed 30% depreciation, thus, there is an escapement of income.

8.1 During the course of scrutiny assessment proceedings, the Assessing Officer has issued notice under section 143(2) of the Act dated 20.08.2010 calling all the details from the assessee in respect of return filed, particularly, the Assessing Officer has asked fixed asset schedule as per the provisions of Income Tax Act. On 09.11.2011, the assessee has filed fixed asset schedule as per the provisions of Income Tax Act vide page 9 of the paper book S. No. 18. The assessee has also filed fixed asset details by letter dated 15.11.2011 as per page 10 & 11 of the paper book. By examining all the details furnished by the assessee, the Assessing Officer has completed the assessment under section 143(3) of the Act dated 16.12.2011. We find that the reopening of assessment in this case is beyond four years. As per proviso to section 147 of the Act, there must be failure on the part of the assessee to disclose fully and truly all the material facts for completing the assessment. In this case, by considering the paper book page 4, 5, 6, 9 & 11, we of the considered opinion that the assessee has filed all the details in respect of depreciation claim made by the assessee. Therefore, it cannot be said

that there is failure on the part of the assessee to disclose fully and truly all the material facts for completing the assessment. The Assessing Officer, in the reasons recorded, simply mentioned that there is a failure on the part of the assessee. The Assessing Officer has not able to establish that there is a failure on the part of the assessee. Thus, in our considered opinion, the notice issued under section 148 of the Act is invalid.

8.2 In so far as case law relied on by the Revenue in the case of CIT v. Lucas TVS Ltd. (2001) has no application to the facts of the case. One of the arguments raised by the Id. DR is that the explanation (1) to section 148 of the Act, the reopening is valid. We find that it has no application to the facts of the present case.

9. In view of the above facts and circumstances, we hold that the notice issued under section 148 of the Act in this case is invalid and thus, the Id. CIT(A) has rightly quashed the reassessment proceedings. Accordingly, the ground raised by the Revenue is dismissed.

10. The grounds and facts of the case for the assessment year 2010-11 are similar to that of the assessment year 2009-10. Thus, the ground

raised by the Revenue for the assessment year 2010-11 also stands dismissed.

11. So far as merits of the case is concerned, as the reopening of assessment has been held as invalid, there is no need for further adjudication on merits or it would be of mere academic.

12. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced on 31st January, 2023 at Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 31.01.2023

Vm/-

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.