

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI MANJUNATHA.G, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **966/CHNY/2020**

निर्धारण वर्ष/Assessment Year: 2008-09

**The DCIT,**  
Corporate Circle – 2(1),  
Chennai – 34.

**M/s. Fuso Glass India (P) Ltd.,**  
vs. No.91, P.H. Road,  
Chennai – 600 084.

(अपीलार्थी/Appellant)

**PAN: AABCM 9798H**

(प्रत्यर्थी/Respondent)

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

: Shri AR.V. Sreenivasan, Addl.CIT  
: Shri I. Dinesh, Advocate

सुनवाई की तारीख/Date of Hearing : 09.05.2023

घोषणा की तारीख/Date of Pronouncement : 09.05.2023

**आदेश /ORDER**

**PER MAHAVIR SINGH, VICE PRESIDENT:**

This appeal by the Revenue is arising out of the order of the Commissioner of Income Tax (Appeals)-6, Chennai in ITA No.183/CIT(A)-6/2013-14 dated 23.03.2020. The assessment was framed by the ACIT, Company Circle IV(4), Chennai for the assessment year 2008-09 u/s.144 r.w.s.148 of the Income Tax Act, 1961 (hereinafter the 'Act'), vide order dated 29.11.2013.

2. At the outset, it is noticed that this appeal by Revenue is barred by limitation by 120 days. The Revenue received the impugned appellate order on 12.06.2020 and appeal was to be filed on or before 12.08.2020 but actually it was filed on 08.12.2020 thereby there was a delay of 120 days. The Id.DR stated that this delay is due to pandemic period of Covid 19 and subsequent events and the Hon'ble Supreme Court in Miscellaneous Application No.665 of 2021 vide order dated 23.03.2020 has given directions that the delay are to be condoned during this period 15.03.2020 to 14.03.2021 and they have condoned the delay up to 28.02.2022 in Miscellaneous Application No.21 of 2022 vide order dated 10.01.2022. Since the Hon'ble Supreme Court has condoned the delay during the said period, respectfully following the same we condone the delay and admit the appeal.

3. The only issue in this appeal of Revenue is as regards to the order of CIT(A) deleting the disallowance made by AO being disallowance of interest u/s.37(1) of the Act.

4. At the outset, the Id. Senior DR pointed out that the CIT(A) has quashed the reassessment i.e., reopening of assessment u/s.147 r.w.s. 148 of the Act for the reason that there is no failure on the part of the assessee to disclose fully and truly all material

facts for completion of assessment for the relevant assessment year. He drew our attention to the finding recorded by CIT(A) which reads as under:-

“Respectfully following the above decisions, I am of the considered view that inasmuch as there was no failure on the part of the appellant to disclose fully and truly all facts necessary for assessment, the invocation of section 147 is bad in law and the impugned assessment is therefore annulled. This ground of appeal is allowed.”

The Id.Senior DR then took us through the additional grounds raised by Revenue for quashing of reopening of assessment which reads as under:-

“2.1. The Ld.CIT(A) erred in holding that the re-assessment proceedings were invalid as there was no failure on the part of the assessee to disclose fully all material facts necessary for making the assessment without appreciating the fact that the Explanation 1 below the proviso to section 147 is applicable to the facts of the case of the assessee.

2.2 The Ld.CIT(A) failed to take into account Explanation 1 of section 147 which makes it clear that production before the Assessing Officer of books of account or other evidence from which material evidence could with due diligence have been discovered by the AO will not necessarily amount to disclosure.”

The Id. Senior DR stated that the assessment year involved is AY 2008-09 and notice for reopening u/s.148 of the Act dated 19.03.2013 was issued to the assessee, which is within four years from the end of the relevant assessment year and hence, the proviso to section 147 of the Act i.e., there is failure on the part of the assessee to disclose fully and truly all facts necessary for assessment will not apply, which is the basis of CIT(A) order.

Hence, he requested that order of CIT(A) be reversed and matter be remanded back to the file of the CIT(A) for adjudication on merits.

5. In reply, the Id.counsel for the assessee Shri I. Dinesh filed memo on behalf of respondent assessee and raised the issue of proviso u/s.151 of the Act as well as that no reason to believe for reopening of assessment is there and the reopening is merely on the basis of audit objection. Hence, these two facets of reopening was not adjudicated by CIT(A). He requested that these two facets also needs to be adjudicated. For this, he supported the order of CIT(A) on following grounds:-

Approval u/s.151 of the Act defective:

6. The notice u/s. 148 of the Act dated 19.03.2013 is inherently defective and thus void ab-initio. The AO had obtained approval of the Commissioner of Income whereas section 151 of the Act mandates that the said approval was to be obtained only from the Joint Commissioner of Income Tax.

7. The notice u/s.148 of the Act and the consequential reassessment order is illegal and the reopening has been rightly quashed by the CIT(A).

No reason to believe:

8. The CIT(A) further erred in upholding the reopening of the assessment as the same had been done by the AO merely on the receipt of Audit Objection without independent application of mind. Reopening based on borrowed satisfaction without any application of mind is unsustainable in law and the CIT(A) ought to have quashed the same on this count also.

9. The absence of reason to believe on the part of the AO is further evidenced by the facts that:

- a. There is no communication from the AO accepting the Revenue Audit Objection, and
- b. In the remand report dated 28.01.2019 the AO has accepted that the disallowance of interest cannot be sustained in full and disallowance of bad debts can only be sustained to the extent of Rs.58,05,327/-.,

6. Both, Id.counsel for the assessee as well as the Id. Senior DR agreed that in any case after setting-aside of CIT(A)'s order, matter has to be remanded back to the file of the CIT(A) for adjudication on the balance two issues of reopening i.e., reason to believe as well as sanction u/s.151 of the Act and also on merits in case reopening is held to be valid. In term of the above, we agree with the plea of both the sides and hence, set-aside the order of CIT(A) and remand the matter back to the file of the CIT(A) for fresh adjudication on merits as well as on reopening on the basis of reason to believe as well as sanction u/s.151 of the Act. In term of the above, appeal of the Revenue is set aside and allowed for statistical purposes.

7. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced in the open court on 9<sup>th</sup> May, 2023 at Chennai.

Sd/-

(मंजुनाथ. जी)

**(MANJUNATHA.G)**

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह )

**(MAHAVIR SINGH)**

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 9<sup>th</sup> May, 2023

**RSR**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant

2. प्रत्यर्थी/Respondent

3. आयकरआयुक्त /CIT

4. विभागीय प्रतिनिधि/DR

5. गार्ड फाईल/GF.