

आयकर अपीलीय अधिकरण, कोलकाता पीठ “बी”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 1285/Kol/2019
Assessment Year: 2010-11

M/s Philips India Ltd. (Formerly Philips Electronics India Ltd.) (PAN: AABCP 9487 A)	Vs.	ACIT, Circle-12(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

I.T.A. No. 1939/Kol/2019
Assessment Year: 2010-11

ACIT, Circle-12(2), Kolkata	Vs.	M/s Philips India Ltd. (Formerly Philips Electronics India Ltd.) (PAN: AABCP 9487 A)
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	24.05.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	31.05.2023
For the Appellant/ निर्धारिती की ओर से	Shri Ketan K Ved, CA
For the Respondent/ राजस्व की ओर से	Shri Rakesh Kumar Das, CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

The appeal by the assessee and the cross appeal by the revenue are preferred against the order of the Ld. Commissioner of Income Tax (Appeals) – 4, Kolkata (hereinafter referred to as the Ld. CIT(A)"] dated 29.03.2019 for the AY 2010-11.

2. Issue raised in ground no. 1 is against the order of Ld. CIT(A) wrong upholding the initiation of reassessment proceedings u/s 147 of the Act and also the order passed u/s 147/11/254/143(3) of the Act dated 27.12.2017.

3. Facts in brief are that the assessee filed return of income electronically on 12.10.2010 disclosing total income of Rs. 1,76,98,50,492/-. Thereafter the assessee revised the return on 28.03.2012 in which the TDS claim was modified and increased. The return was processed u/s 143(1) of the Act on 11.08.2011. The case of the assessee thereafter selected for scrutiny and assessment was framed u/s 143(3) read with Section 144C(1) vide order dated 26.02.2015. Thereafter the order u/s 154 / 143(3) read with Section 144C was passed on 31.10.2016 with total income of Rs. 4,11,86,92,370/-. Subsequently the AO reopened the assessment u/s 147 of the Act by issuing notice u/s 148 of the Act dated 29.03.2017 and the assessment was framed u/s 147/144/254/143(3) dated 27.12.2016 by making various additions. Pertinent to note that the assessee has not filed any return in response to notice u/s 148 of the Act.

4. The Ld. Counsel for the assessee submitted that the initiation of reassessment proceedings as well as consequent order framed are invalid as the case has been reopened after a period of 4 years from the end of relevant assessment year. The Ld. A.R submitted that in the present case, the assessment has been framed u/s 143(3) of the Act vide order dated 26.02.2015 and therefore any reopening after a period of four years from the end of relevant assessment year can only be made if there is a failure on the part of the assessee to disclose any material fact relating to assessment of income leading to under assessment of income. The Ld. A.R took us through the reasons recorded by the AO and pointed out that the AO has recorded the reasons on

examination on records that certain incomes have escaped assessment. The Ld. A.R pointed out that the AO has, on the basis of notes of profits and loss account, computation of income and on a perusal of balance sheet etc has come to conclusion that income in respect of certain items have escaped assessment. The Ld. A.R submitted that the action of the AO in reopening the assessment after a period of 4 years was in violation of proviso to section 147 of the Act as there was no failure on the part of the assessee as contemplated in the proviso to Section 147 of the Act. The Ld. A.R therefore submitted that the reassessment proceedings as well as consequent order may kindly be quashed as being invalid and nullity in the eyes of law. In defense of his arguments, the Ld. A.R relied on the decision of Hon'ble High Court of Bombay in the case of Hindusthan Lever Ltd. vs. R. B Wadkar in [2004] 137 Taxman 479 (Bom) and the decision of Co-ordinate Bench of Kolkata in the case of DCIT vs. M/s Pacharia Exports Pvt. Ltd. in ITA No. 558/ Kol/2020 for AY 2011-12 dated 7.3.2022.

5. Per contra, the Ld. D.R on the other hand relied heavily on the order of authorities below by submitting that the assessee has not filed any return of income in response to notice issued u/s 148 of the Act though objections were filed and duly disposed off by the AO. The Ld. D.R also pointed out that the reopening was made after obtaining requisite permission from the competent authority who has also gone through the reasons recorded for reopening assessment and therefore the plea of the assessee that the reason were not recorded properly and there was no failure on the part of the assessee is devoid of any merit and substance. The Ld. D.R therefore prayed that the legal ground raised by the assessee may kindly be dismissed.

6. We have heard the rival contentions and perused the material available on record. The undisputed facts are that reopening of assessment u/s 147 of the Act was made after a period of four years from the end of relevant assessment year. We also note that the assessment in this case was framed u/s 143(3) read with Section 144C(1) vide order dated 26.02.2015. In our opinion , the reopening of assessment u/s 147 of the Act can only be made if the conditions as envisaged by proviso to Section 147 of

the Act are satisfied and not otherwise. In other words, there has to be failure on the part of the assessee to disclose any material fact during the course of assessment proceedings due to which the income of the assessee has escaped assessment but in the present case after perusing the reasons recorded u/s 148(2) of the Act, we observe that the AO has not even whispered about any failure on the part of the assessee and reopened the assessment on the basis of same records which were before the AO in the original assessment proceeding namely profit and loss account, computation of income and balance sheet etc. The reasons recorded has to be read as they are and can not be supplemented. Under these circumstances, we are not in a position to sustain the order of Ld. CIT(A) as the reopening has been made without satisfying the condition as laid down in the proviso to Section 147 of the Act . The assessee's case is supported by the decision of Hon'ble Bombay High Court in the case of Hindusthan Lever Ltd. (supra) wherein the Hon'ble High Court has held as under:

"20. The reasons recorded by the Assessing Officer nowhere state that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn based on reasons not recorded. It is for the Assessing Officer to disclose and open his mind through reasons recorded by him. He has to speak through his reasons. It is for the Assessing Officer to reach to the conclusion as to whether there was failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for the concerned assessment year. It is for the Assessing Officer to form his opinion. It is for him to put his opinion on record in black and white. The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. Reasons are the manifestation of mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment. The reasons recorded by the Assessing Officer cannot be supplemented by filing affidavit or making oral submission, otherwise, the reasons which were lacking in the material particulars would get supplemented, by the time the matter reaches to the Court, on the strength of affidavit or oral submissions advanced.

21. Having recorded our finding that the impugned notice itself is beyond the period of four years from the end of the assessment year 1996-97 and does not comply with the requirements of proviso to section 147 of the Act, the Assessing Officer had no jurisdiction to reopen the assessment proceedings which were concluded on the basis of assessment under section

143(3) of the Act. On this short count alone the impugned notice is liable to be quashed and set aside.”

The case of assessee is squarely covered by the decision of Co-ordinate Bench of Kolkata in the case of M/s Pacharia Exports Pvt. Ltd. (supra) wherein the Co-ordinate Bench has held as under:

“9. We have heard rival contentions and perused the material on record carefully. The undisputed facts are that the case of the assessee was reopened u/s 147 of the Act after a period of four years from the end of the assessment year. The proviso to section 147 of the Act which mandates that the reopening beyond four years from the end of relevant assessment year can only be made if under assessment or escapement is by reasons of the failure of the assessee to disclose any material facts. Thus reopening of assessment after expiry of four years can only be made if the condition as laid down in the proviso to Section 147 of the Act are satisfied that is failure on the part of the assessee to truly and fully disclose any material fact or information which ultimately leads to escapement of income. In the present case before us, the assessment was framed u/s 143(3) of the Act vide order dated 24.02.2014. We note that during the course of assessment proceeding, the issue of raising loans has been examined at length by the AO by specifically calling upon the assessee to provide/furnish the details of the loans and advances raised during the year which was duly complied with by the assessee by filing all the details/evidences and the AO, only after examining them, accepted the plea of the assessee as regards the loans raised and accordingly framed the assessment u/s 143(3) of the Act accepting all those transactions. Besides the assessee has made full disclosure of these transactions in the books of account which have been examined at length by the AO during the course of original assessment proceeding. Therefore, the reopening of assessment u/s 147 in the present case, without any reference to failure on the part of the assessee to disclose all facts regarding the said loans in the return of income books of account and also during the assessment proceeding, is not justified and is in violation to proviso to section 147 of the Act. The case of the assessee finds support from the decision of *New Delhi Television Ltd. vs DCIT (supra)* wherein it has been held that where the assessee has disclosed all material facts qua the issuance of convertible bonds, thus there was no failure on the part of the assessee to disclose material facts and therefore notice issued to the assessee u/s 147 of the Act after a period of 4 years has been quashed. Similarly in the case of *CIT vs Multiplex Trading & Industrial (supra)*, the Hon'ble Delhi High Court has held that since the assessee has disclosed 'all the material facts at the time of making assessment, initiation of reassessment proceedings after expiry of four years from the end of relevant assessment year on the basis of report of investigation cannot be sustained and has to be set aside. In this case, the assessment was completed u/s 143(3) and thereafter the AO received the information from Investigation Wing that the assessee has received bogus loans in the form of accommodation entries and on that basis the case of the assessee was reopened. In the case of *Rajivraj Ranbirsingh Choudhary vs ACIT (supra)*, the Hon'ble Gujarat High Court as laid down the same ratio. In this case the assessment was framed u/s 143(3) of the Act and the AO accepted the loans taken by the assessee from the family members. The assessment was reopened after a period of more than 4 years on the ground that sources of loan funds were not explained. Considering the facts of the present case before us in the light of the aforesaid decisions, we are inclined to hold that the reopening of assessment is invalid and is accordingly quashed. The cross objection of the assessee is allowed.”

Since the facts of the case are quite similar to the facts of the decision as discussed above, we are, therefore, inclined to hold that AO has no jurisdiction to re-open the

assessment and accordingly quash reassessment proceedings as well as consequent order. Ground no. 1 raised by the assessee is allowed on legal issue.

7. Since we have quashed the assessment order, there is no need to adjudicate other grounds raised by the assessee on merits. Similarly ITA No. 1939/Kol/2019 appeal by the revenue becomes infructuous and is accordingly dismissed.

8. In the result, the appeal of the assessee is allowed and the appeal of the revenue is dismissed.

Order is pronounced in the open court on 31st May, 2023

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)
 Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)
 Accountant Member/लेखा सदस्य

Dated: 31st May, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- M/s Philips India Ltd., 3rd Floor, Tower A, DLF Park, 08 Block AF, Major Arterial Road, New Town (Rajarhat), Kolkata-7000156
2. Respondent – ACIT, Circle-12(2), Kolkata
3. Ld. CIT(A)-4, Kolkata (Sent through e-mail)
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
 ITAT, Kolkata Benches, Kolkata