

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH, CHENNAI

श्रीमहावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्यके समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकरअपीलसं./**ITA No.: 74/CHNY/2018**

निर्धारण वर्ष/Assessment Year: 2007 - 08

Sundram Fasteners Ltd.,
98-A, 7th Floor,
Dr. Radhakrishnan Salai,
Mylapore,
Chennai – 600 004.

The DCIT,
vs. Corporate Circle 6(2),
Chennai.

PAN: AAACS 8779D

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

&

आयकरअपीलसं./**ITA No.: 317/CHNY/2018**

निर्धारण वर्ष/Assessment Year: 2007 - 08

The DCIT,
Corporate Circle 6(2),
Chennai.

Sundram Fasteners Ltd.,
vs. 98-A, 7th Floor,
Dr. Radhakrishnan Salai,
Mylapore,
Chennai – 600 004.

(अपीलार्थी/Appellant)

PAN: AAACS 8779D

(प्रत्यर्थी/Respondent)

निर्धारितकी ओर से/Assessee by

: Shri Vikram Vijayaraghavan,
Advocate

राजस्वकीओरसे /Revenue by

: Shri G. Johnson, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 13.06.2023

घोषणा की तारीख/Date of Pronouncement : 16.06.2023

आदेश / O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These cross appeals by the assessee and Revenue, are arising out of order of the Commissioner of Income Tax (Appeals)-15, Chennai in ITA No.169/15-16/CIT(A)-15 dated 29.09.2017. The assessment was framed by the DCIT, Corporate Circle 6(2), Chennai, vide order dated 26.03.2015 for the assessment year 2007-08 u/s.143(3) r.w.s.147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 26.03.2015.

Assessee's appeal in ITA No.74/CHNY/2018

2. The first issue in this appeal of assessee is against the order of CIT(A) confirming the action of AO in reopening the assessment by issuing notice u/s.148 r.w.s.147 of the Act, despite the fact that there is no failure on the part of the ae to disclose fully and truly all material facts for completing the assessment and assessment was completed u/s.143(3) of the Act. For this, assessee has raised the following grounds:-

2. The Commissioner of Income Tax (Appeals) erred in confirming the validity of the reopening of the assessment under section 147.

2.1 The Commissioner of Income Tax (Appeals) ought to have found that

assessment completed u/s.143(3) cannot be reopened beyond four years unless there is failure on the part of the assessee to disclose fully and truly all material facts for completing the assessment.

2.2 The Commissioner of Income Tax (Appeals) should have found that reopening of Assessment is barred by limitation under 1st proviso to sec 147 of the Act.

3. Brief facts are that the assessee company filed its return of income for the relevant assessment year 2007-08 on 14.11.2007 which was revised on 30.03.2009. The assessment was completed by issuing notice u/s.143(2) of the Act and assessment framed u/s.143(3) of the Act vide order dated 29.12.2019. Subsequently, the AO reopened the assessment u/s.147 of the Act by issuing notice u/s.148 of the Act dated 26.03.2017 and for this he has recorded the reasons, which are enclosed in assessee's paper-book at page 74. The relevant reasons read as under:-

i) The assessee had claimed Long Term Capital loss of Rs.15,29,684/- on the sale of shares of TVS International Inc, Michigan, USA. Since the transfer relates to shares held in foreign company outside India it cannot be said to accrue or arise in India. As seen from the details furnished, the assessee sold the entire shares of 44,817 at \$2,68,170/- at the same value of cost of acquisition of \$2,68,170/- and there has not been any loss in dollars. The loss claimed and allowed is only notional and due to the increase in exchange fluctuation between the date of acquisition during 2000-01 to 2006-07 and date of sale during 2006-07. This needs to be disallowed.

ii) The assessee had incurred an expenditure of Rs.84,45,71,792/- under schedule XVI Salaries & Wages etc. which includes leave Salary provision of Rs.79,72,302/- on actuarial valuation. However this is not allowable u/s 43B (f) which can be allowable u/s 43B () which can be allowable only in

the year in which it was actually paid. Further it is seen that as per Sl. No. 14(4) under schedule XVII- Notes on account - the short term compensated absences and long term absences are provided based on actuarial valuation made at the end of year thus falling squarely under section 43(B)(f) which needs to be disallowed.

(iii) The assessee has incurred expenditure of Rs. 6411.43 lakh as Miscellaneous expenditure under schedule XVI which included Rs.1,89,98,487.34/- as US Warehouse expenses. Normally the expenditure beyond the Customs Point at Chennai should be borne by the buyer. If he expenses had been incurred in India on behalf of the buyer through agents then tax has to be deducted u/s 195. As no TDS has been made on this amount, the same needs to be disallowed u/s 40(a) (ia).

iv) The assessee has claimed additional depreciation of Rs.2,53,63,037/- separately claimed as brought forward in respect of Plant & Machinery installed and put to use during the year ended 31.03.2006. The additional depreciation on plant and machinery is only for the year in which it has been put to use and not for subsequent years. This additional depreciation of Rs.2,53,63,037/- needs to be disallowed.

v) In the return of income filed on 16/11/2007, the assessee had declared a taxable income of Rs.101,64,55,333/-. The assessee had filed the revised return of income admitting an income of Rs.98,66,80,908/-. The assessee obtained the acknowledgement for the revised return only on 01.04.2009. Since the revised return is not filed within one year from the end of the assessment year, the same needs to be treated as invalid and the difference amount of Rs.2,97,74,425/- needs to be disallowed.

The assessee objected to the reasons vide letter dated 06.03.2015 but the AO rejected the objections and completed assessment u/s.143(3) r.w.s.147 of the Act vide order dated 26.03.2015. Aggrieved, assessee preferred appeal before CIT(A) on reopening of assessment.

4. The CIT(A) confirmed the reopening vide para 4.3.2 as under:-

4.3.2 Respectfully relying on the decisions cited supra, the appellant's contention with regard to the re-opening is not acceptable and the re-opening u/s.147 is upheld. The grounds are dismissed.

Aggrieved, now assessee is in appeal before the Tribunal.

5. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the admitted facts are that the relevant assessment year involved is 2007-08 and assessee filed its return of income on 14.11.2007, which was subsequently revised on 30.03.2009. The original scrutiny assessment was completed on 29.12.2010 and subsequently, notice u/s.148 of the Act was issued dated 26.03.2014 and assessment was reopened u/s.147 of the Act. As argued by Id.counsel now before us that from the very reasons the reopening is based on following items:-

- i) Long term Capital loss of Rs.15,29,684/- on sale of shares of TVS International Inc., Michigan, USA.
- ii) Provision for Leave salary of Rs.79,72,302/-
- iii) To disallow warehouse expenses of Rs.1,89,98,487/- included in miscellaneous expenditure u/s.40(a)(ia)
- iv) Additional depreciation of Rs.2,53,63,037/-
- v) To disallow the difference of Rs.2,97,74,425/- between the original and revised return since revised return was filed belatedly.

The Id.counsel for the assessee before us argued and drew our attention to page 23 of assessee's paper-book, whereby notice

u/s.142(1) of the Act dated 14.10.2009 is enclosed and the questionnaire was replied by the assessee vide letter dated 23.11.2009 and complete details including the details of warehousing expenses of Rs.1,89,98,487/- was filed as miscellaneous expenditure along with Annexure 12 and the details are enclosed at page 56 of assessee's paper-book. Further, in regard to provision for leave salary of Rs.79,72,302/- was replied by assessee vide letter dated 01.04.2009 and the relevant reply is at pages 16 to 21 of assessee's paper-book. Further, the additional depreciation details of Rs.2,53,63,037/- was also filed during the course of assessment proceedings vide letter dated 01.04.2009 and enclosed at assessee's paper-book at pages 16 & 17. As regards to long term capital loss of Rs.15,29,684/- on sale of shares of TVS International Inc., USA, the details are at page 20 of assessee's paper-book, vide reply dated 01.04.2009 in regard to exchange rate difference of foreign currency loan on acquisition of investment and sale of investment differential amount is not notional loss but due to increase in exchange fluctuation between the date of acquisition of assets in 2000-01 and date of sale in 2006-07 relevant to this assessment year. These details are filed by assessee before the AO during the course of assessment proceedings. The last item being

difference in the original return and revised return of Rs.2,97,74,425/-, since according to AO the revised return filed belatedly but the assessee contended that the revised return was filed on the due date i.e., 30.03.2009 because original return was filed on 14.11.2007 and the time limit available u/s.139(5) of the Act is one year from the end of the relevant assessment year. That means, the due date of filing of return of income u/s.139(5) of the Act for the assessee is 31.03.2009 whereas, assessee has filed return of income on 30.03.2009. The relevant evidence was filed by assessee i.e., acknowledgment of the return filed with the Department. It means that the assessee has filed complete details before the AO during the course of original assessment proceedings and even going by the reason recorded by the AO for issuance of notice u/s.148 of the Act and reopening of original assessment, which is beyond 4 years, there is no charge levied that there is any failure on the part of the assessee to disclose fully and truly all material facts necessary for framing its assessment for the relevant assessment year. Once this is the case, any reasons recorded that there is failure on the part of the assessee to disclose fully and truly all material facts and assessment was completed originally u/s.143(3) of the Act and admittedly the reopening is beyond 4

years, we are of the view that re-opening is bad in law. This view of ours is supported by the decision of 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. In view of above facts and circumstances, we are of the view that reopening is beyond 4 years and as the original assessment was framed u/s.143(3) of the Act, the Revenue could not establish any failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment, the reopening in present case is bad in law. Hence, reopening is quashed and this jurisdictional issue is allowed in favour of assessee. Since, we have quashed the reassessment on reopening, we need not to adjudicate the issues on merits. The appeal of the assessee is allowed.

ITA No.317/CHNY/2018

7. Coming to Revenue's appeal, since we have quashed the reopening we need not to go into the issues raised by Revenue on merits. Therefore, the appeal of the Revenue is dismissed as academic.

8. In the result, the appeal filed by the assessee in ITA No.74/CHNY/2018 is allowed and the appeal filed by the Revenue in ITA No.317/CHNY/2018 is dismissed.

Order pronounced in the open court on 16th June, 2023 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 16th June, 2023

RSR

आदेशकीप्रतिलिपिअग्रेषित/Copy to:

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