आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ,चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, CHENNAI

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

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND
SHRI MANJUNATHA.G, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA Nos.: 866 & 867/CHNY/2020**
निर्धारण वर्ष/Assessment Years: 2010-11 & 2011-12

The DCIT, Corporate Circle – 2(1), Chennai – 34.	vs.	**Equitas Holdings Pvt. Ltd.,** No.410A, 4th Floor, Phase II, Spencer Plaza, 769 Anna Salai, Chennai – 600 002. **PAN: AAACU 9126C**
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri S. Senthil Kumaran, CIT
प्रत्यर्थी की ओर से/Respondent by : Shri T. Banusekar, CA

सुनवाई की तारीख/Date of Hearing : 08.06.2023
घोषणा की तारीख/Date of Pronouncement : 16.06.2023

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

These appeals by the Revenue are arising out of the common order of the Commissioner of Income Tax (Appeals)-6, Chennai in ITA No.65/17-18 & 469/CIT(A)-6/2016-17 of dated 19.03.2020. The assessments were framed by the DCIT, Corporate Circle 2(1), Chennai for the assessment years 2010-11 & 2011-12 u/s.143(3)

r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act'), vide orders dated 05.12.2017 & 31.12.2016 respectively.

2. At the outset, it is noticed that these appeals by Revenue are barred by limitation by 47 days. The Revenue received the impugned appellate order on 13.07.2020 as per Form 36 and appeal was to be filed on or before 10.09.2020 but actually it was filed on 28.10.2020, thereby there was a delay of 47 days. The ld.CIT-DR stated that this delay is due to pandemic period of Covid 19 and subsequent events. We noted that 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 appeals.

ITA No.866/CHNY/2020

3. The only issue in this appeal of Revenue is against the order of CIT(A) quashing the reopening of assessment u/s.147 r.w.s.148

of the Act. For this, Revenue has raised the following three grounds:-

> 1. The order of the CIT(A) is contrary to law, facts and circumstances of the case.
>
> 2. The learned CIT(A) erred in holding the reopening assessment and invocation of section 147 is bad in law.
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> 3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.

4. Brief facts are that the assessee company is engaged in the business of micro finance and for the relevant assessment year 2010-11 filed its return of income originally on 30.09.2010. Subsequently this return was revised on 14.02.2012. Subsequently the assessee's case was selected for scrutiny assessment by issuing notice u/s.143(2) of the Act and assessment was completed by passing original assessment order u/s.143(3) of the Act dated 21.12.2012, by making certain additions and assessing the income at Rs.41,13,15,437/-. Subsequently, the AO issued notice u/s.148 of the Act dated 03.11.2016 since according to AO income has escaped assessment within the meaning of section 147 of the Act. In response to above notice issued u/s.148 of the Act, the assessee requested for reasons for reopening of assessment, which was communicated to the assessee by AO vide letter dated 12.07.2017.

The AO in his reassessment order passed u/s.143(3) r.w.s. 147 of the Act dated 05.12.2017 reproduced the reasons but the assessee filed copy of reasons supplied to it vide letter dated 12.07.2017 and the relevant reasons as per the letter of the AO read as under:-

> 2.1. The assessment in this case was completed on 21.12.2012 u/s 143(3) of the Act. As against returned income of Rs. 40,30,80,696/- the assessment was completed under normal provisions at an assessed income of Rs.41,13,15,437/-. The major disallowances made were on account of disallowance of software expenses, 14A disallowance and excess depreciation on UPS and difference in securitization.
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> 2.2. It is seen from Schedule 18- Notes on accounts-6 Assignment of Receivables, filed for the AY 2010-11 that the company had entered into bilateral assignment with Banks/NBFCs. Assets de-recognized during the AY 2010-11 resulted in total gains on assignment was 12.06 crores whereas gain recognized in the P & L A/C was only Rs. 7.47 crores.
>
> 2.3. In true sale all receivable are legally separated from the selling company. The selling company receives the sale price immediately and transfers all the Credit risk to the Special Purpose Vehicle. The cash collateral provided as first loss and second loss are appropriation amount of sale price only.
>
> 2.4. If there is any loss in the receivable in the minimum guarantee amount, that can be claimed by the assessee company at the time of actual occurrence only. Therefore the assessee company ought to have offered the entire profit on assignment of receivables during the year. Thus gain of Rs.4.59 crores was not offered to tax.
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> 2.5. Similarly, in Notes to accounts -5 Securitization of Assets, (filed for AY 2010-11) it was stated that b0ok value of Loan assets securitized during the AY was 42.26 crores, Sale consideration was 48.08 crores and the total gain on the transaction was 5.82 crores. However, the gain recognized in P&L A/C during the year is only Rs. 3.77 crores stating that the balance of Rs.2.05 crores would be over the life of recoverable during the year.

> 2.6. In securitization process, the seller recovers the entire payment at one stroke from Special Purpose Vehicle in the form of purchase price and all credit risk is transferred to the SPV. As such there is no question of amortizing the receivable over its life period. If there is any loss in the receivable in the minimum guarantee amount, that can be claimed by the assessee company at the time of actual occurrence only. Therefore the assessee company ought to have offered the entire profit on securitization in the year of sale, i.e. 2010-11. Thus, gain of Rs.2.05 crores in respect of the securitization was not offered to tax.
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> 3 The above amount of Rs. 6,64,00,877/- being represents income escaped under various heads and is to be brought to tax. In view of reasons mentioned above, the AO had reasons to believe that your income for AY 2010-11 had escaped assessment and notice u/s 148 was issued.

The assessee before the AO raised objection vide letter dated 31.07.2017, which was rejected by the AO vide letter dated 28.08.2017. The objection raised by the assessee was that the AO has not brought out any fresh tangible material and there is no reason to show that income had escaped assessment. The AO further reproduced the objections and clarification given by the assessee during the course of reassessment proceedings but the same was rejected and reopening was held to be valid. Aggrieved, assessee challenged the reopening before the CIT(A).

5. The CIT(A) after considering the reasons recorded by the AO noted that the reassessment framed by the AO is beyond 4 years and assessee's case is fully covered by the proviso to section 147 of

the Act and therefore, he quashed the reopening of assessment as bad in law and for this, he recorded the finding in para 6.2 & 6.3 of his appellate order as under:-

> "6.2 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 assessments are therefore annulled. This ground of appeal is allowed.
>
> 6.3 Inasmuch as it has been held that the impugned assessments are bad in law, the other grounds raised by the appellant have become infructuous and hence dismissed.

Aggrieved, now Revenue is in appeal before the Tribunal.

6. Before us, the ld.CIT-DR made submissions that from the very reasons recorded for reopening of assessment there is a clear cut case of failure on the part of the assessee to disclose fully and truly all facts necessary for assessment for the reason that in the scrutinization process, as per notes to accounts of the assessee i.e., Note No.5 it is clearly stated that the book value of loan assets scrutinized during assessment year was Rs.42.26 crores and sale consideration was Rs.48.08 crores and hence, total gain on the transaction was Rs.5.82 crores. He stated that as per the profit & loss account, the gain recognized by the assessee during the year was at Rs.3.77 crores and the balance amount of Rs.2.05 crores

would be over the life of recoverable during the year but not disclosed by the assessee. Hence according to ld.CIT-DR, this amount of Rs.2.05 crores was not disclosed and there is clear cut failure on the part of the assessee to disclose fully and truly all material facts for its assessment for the relevant assessment year and therefore, the AO has rightly rejected the assessee's contention and CIT(A) wrongly invoked the provisions i.e., proviso to section 147 of the Act. The ld.CIT-DR relied on the decision of Hon'ble Supreme Court in the case of ITO vs. Techspan India Pvt. Ltd., Civil Appeal No.2732 of 2007 order dated 24.04.2018. The ld.CIT-DR stated that the Hon'ble Supreme Court has considered the decision of Hon'ble Supreme Court in the case of CIT vs. Kelvinator of India Ltd., (2010) 320 ITR 561. He stated that the Hon'ble Supreme Court has held that before interfering with the proposed reopening of assessment on the ground that the same is based only on change of opinion, the court ought to verify whether the assessment earlier made has either expressly or by necessary implication expressed an opinion on a matter which is the basis of alleged escapement of income that was taxable. He argued that this is clear cut case of escapement of income and there is failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the relevant assessment year.

7. On the other hand, the ld.AR for the assessee first of all took us through the reasons recorded, as noted above, that the very basis of reopening is the accounts of the assessee or notes on accounts i.e.,Schedule 18 Note No.6 assignment of receivables filed by the assessee during the course of original assessment proceedings and also along with the return of income originally. The ld.AR for the assessee stated that all the details in regard to gain arising on scrutinization and money held in trust in respect of collections from assets derecognized on account of scrutinization or assignment of trade receivable are clearly reflected and explained before the AO during the original assessment proceedings vide letter dated 25.10.2012 and assessment was finally framed u/s.143(3) of the Act vide order dated 21.12.2012. The ld.AR for the assessee took us through the relevant letter written to the AO dated 25.10.2012, which is enclosed in assessee's paper-book at pages 9 to 13. He explained that the entire process of scrutinization and money held in trust in respect of collection from assets derecognized on account of scrutinization of trade receivable are clearly explained. He argued that there is no failure on the part of the assessee and from the very reasons the AO himself noted that he has gone through the return of income and information filed during the course of assessment proceedings and there is no

tangible material came to his notice after completion of assessment. The ld.AR argued that the assessee's case is fully covered by the proviso and for this, he relied on the decision of Hon'ble Supreme Court in the case of CIT vs. Foramer France, (2003) 264 ITR 566.

8. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the relevant assessment year involved is assessment year 2010-11 and originally assessment was completed by the AO u/s.143(3) of the Act vide order dated 21.12.2012, wherein the assessee has filed complete details in regard to scrutinization of assets and note on monies held in trust in respect of collections from assets derecognized on account of scrutinization of trade receivables. The assessee has filed complete details before AO by enclosing the accounts in the assessee's return of income filed originally and before completion of original assessment on 25.10.2012. In our view, there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for framing of assessment and assessment was completed originally u/s.143(3) of the Act and admittedly the reopening is beyond 4 years because notice u/s.148 of the Act was issued on 31.11.2016, no re-opening is possible. 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.
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> 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 :
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> "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."
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> 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.
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> 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.
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> 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."

9. 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 which is against the provisions of the Act, we find no infirmity in the order of CIT(A) and the same is confirmed. This appeal of the Revenue is dismissed.

ITA No.867/CHNY/2020

10. The only issue in this appeal of Revenue is against the order of CIT(A) quashing the reopening of assessment framed u/s.147 r.w.s.148 of the Act and for this, Revenue has raised following three grounds:-

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

> 2. The learned CIT(A) erred in holding the reopening assessment and invocation of section 147 is bad in law.
>
> 3. For these and other grounds that may be adduced at the time of hearing, it is prayed that the order of the learned CIT(A) may be set aside and that of the Assessing Officer restored.

11. Brief facts are that the relevant assessment year involved in assessment year 2011-12 and assessee filed its return of income on 29.09.2011 and subsequently the income was revised by filing a revised return on 14.02.2012. The original assessment was completed u/s.143(3) of the Act on 07.11.2013. Subsequently, the AO issued notice u/s.148 of the Act as according to him income had escaped assessment within the provisions of section 147 of the Act and notice u/s.148 of the Act was issued on 18.03.2016. At the outset, the ld.CIT-DR made submission and drew our attention to the findings recorded by CIT(A) in para 6.2 & 6.3 for quashing of reopening as under:-

> "6.2 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 assessments are therefore annulled. This ground of appeal is allowed.
>
> 6.3 Inasmuch as it has been held that the impugned assessments are bad in law, the other grounds raised by the appellant have become infructuous and hence dismissed.

The ld.CIT-DR stated that assessee's case does not fall under the proviso to section 147 of the Act as the reopening is within 4 years and hence, the proviso will not apply to the facts of the case.

12. On the other hand, the ld.AR for the assessee vehemently opposed the arguments of the ld.CIT-DR but could not point out as to how the proviso to section 147 of the Act will apply to the present facts of the case because assessment is reopened within 4 years.

13. After hearing both the sides and going through the facts of the case, we feel that once the assessment is reopened within 4 years as the assessment year involved is assessment year 2011-12 and reopening notice u/s.148 of the Act issued is dated 18.03.2016, it means that the reopening is within 4 years and assessee's case will not fall under the proviso to section 147 of the Act. The CIT(A) has simpliciter quashed the reopening only on the issue that the assessee's case falls under the proviso to section 147 of the Act. Therefore, we reverse the findings of CIT(A) and set aside the matter back to the file of the CIT(A) to adjudicate the other facets of reopening as raised by assessee and also on merits. In term of

the above, this appeal of the Revenue is allowed for statistical purposes.

14. In the result, the appeals filed by the Revenue in ITA No.866/CHNY/2020 is dismissed and ITA No.867/CHNY/2020 is allowed for statistical purposes.

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

Sd/-	Sd/-
(मंजुनाथ. जी)	(महावीर सिंह)
(MANJUNATHA.G)	**(MAHAVIR SINGH)**
लेखा सदस्य/ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 16th June, 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.