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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENTAND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./**ITA No.: 707/CHNY/2023**
निर्धारण वर्ष/Assessment Year: 2011-12

M/s. Star Plastics, 168/1, Parayankattu Thottam, Kolathupalayam, Gangapuram Post, Erode – 638 102.	Vs.	**The Deputy Commissioner of Income Tax,** Circle-1, Erode.
PAN: ABJFS 8110P		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Ms.N.V. Lakshmi, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri AR.V. Sreenivasan, Addl.CIT

सुनवाई की तारीख/Date of Hearing : 20.03.2024
घोषणा की तारीख/Date of Pronouncement : 22.03.2024

आदेश /O R D E R

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi in Order No.ITBA/NFAC/S/250/2022-23/1051772075(1) dated 31.03.2023. The assessment was framed by the Assistant Commissioner of Income Tax, Circle-2, Erode for the assessment year 2011-12 u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 07.12.2018.

2. At the outset, it is noticed that the appeal filed by the assessee is barred by limitation by 1 day. The order of CIT(A) dated 31.03.2023 was received by the assessee on 31.03.2023 as per Form 36. The appeal has to be filed on or before 30.05.2023 but was filed only on 31.05.2023. The assessee has filed affidavit along with condonation petition stating the reason that it had sent the appeal papers to its counsel for filing. However, the appeal papers reached the counsel's office only in the late evening on 30.05.2023 and hence, it could not be filed on 30.05.2023. This delay of 1 day was unintentional. When this was pointed out to ld. CIT-DR, he opposed condonation of delay as the cause is not reasonable. After going through the facts and reasons stated and considering the small delay of 1 day, we are inclined to condone the delay. Hence, delay is condoned and appeal is admitted.

3. The only issue in this appeal of assessee is against the order of CIT(A) confirming the reopening of assessment beyond four years despite the fact that original assessment was completed u/s.143(3) of the Act and there is no failure shown in the reasons recorded on the part of the assessee to disclose fully and truly all material facts necessary for its completion of assessment for relevant assessment year. For this, the assessee first of all relied on ground No.6, which reads as under:-

"6. The CIT(A) erred in upholding the reopening made by the assessing officer beyond 4 years from the end of the relevant assessment year, particularly when there is no failure on part of the appellant to fully and truly disclose all material facts."

4. Brief facts are that the original assessment was completed by the AO u/s.143(3) of the Act vide order dated 25.02.2014 for the relevant assessment year 2011-12. The assessee is engaged in the business of manufacturing and sale of PVC profiles and pipes and generation of electricity through wind mills. Subsequent to assessment, the AO issued notice u/s.148 of the Act dated 28.03.2018 and for that the AO recorded the following reasons:-

"The assessee firm filed the return of income for A.Y.2011-12 on 22/09/2011 admitting loss of Rs.1,35,37,362/-. It is seen hat assessee in depreciation statement has claimed opening balance as on 01.04.2010 as Rs.2,76,00,000/- and claimed 80% depreciation calculated at Rs.2,20,80,000/-. But it is seen that the Wind Electric Generator purchased from M/s RRB Energy (total cost including installing and commissioning amounts to Rs.2,76,00,000/-) has been commissioned on 31/03/2010. Also from EB statement, it is seen that electricity generation has started on 31/03/2010. Thus asset was put to use in AY 2010-11 itself. Hence after adjusting depreciation of asset being put to use at 40%, the opening balance for AY 2011-12 will be Rs.1,65,60,000/-. 80% of depreciation on above amounts to Rs.1,32,48,000/- as against claim of Rs.2,20,80,000/-. Thus the income to the tune of Rs.88,32,000/- has escaped assessment by way of excess loss allowed for AY 2011-12 within the meaning of Section 147 of IT act."

These reasons were supplied to assessee by the ACIT, Circle-2, Erode vide letter dated 30.01.2019. The AO completed reassessment u/s.143(3) r.w.s. 147 of the Act and disallowed excess

claim of depreciation amounting to Rs.88,32,000/-, undisclosed interest of Rs.5,88,071/- and disallowance of expenses on estimate basis at Rs.7,38,090/-.

5. Aggrieved, assessee preferred appeal before CIT(A) and before CIT(A) also, assessee challenged reopening but CIT(A) noted that the AO has followed due procedure prescribed under the law to reopen the case for the year under consideration after having reason to believe that income in this case has escaped assessment. The CIT(A) noted that in response to notice u/s.148 of the Act dated 28.03.2018, the assessee filed return of income on 01.08.2018 admitting loss at Rs.1,35,37,362/-. The CIT(A) was of the view that the AO based his reason to believe on material available with him which had direct nexus with the factum of income escaping assessment and hence, he upheld the reopening. Aggrieved, assessee came in appeal before the Tribunal.

6. Before us, the ld.counsel for the assessee stated that the relevant assessment year involved is assessment year 2011-12 and notice u/s.148 of the Act is dated 28.03.2018. It means that the reopening is beyond 4 years. The original assessment was completed u/s.143(3) of the Act vide order dated 25.02.2014 after

calling for details and evidences. She stated from the above reproduced reasons, which are read out by her and stated that there is no charge levied by the AO in his reasons recorded that the income has escaped assessment due to the failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the relevant assessment year 2011-12. From the reasons itself, the ld.counsel argued that only charge was that the machinery was not in use and this information he culled out from the assessment records. He also noted from the EB statement, which is part of assessment record that electricity generation has started on 31.03.2010. Hence, according to him, the WDV after adjusting depreciation of assets being put to use of 40%, the opening balance as on 31.03.2011 will be Rs.1,65,60,000/- and excess claim of depreciation was claimed in assessment year 2011-12 amounting to Rs.88,32,000/-. She argued that the entire details were before the AO because this is part of assessee's accounts and hence, very reopening beyond four years, in view of the proviso to section 147 of the Act is bad in law.

7. On the other hand, the ld. Senior DR relied on the decision of Hon'ble Supreme Court in the case of Girilal & Co., reported in [2016] 387 ITR 122, wherein the meaning of disclosure of

information does not mean that the disclosure made in the adjustments to statement about value of land would not mean to disclosure of information about size of plot. The Hon'ble Supreme Court held in favour of Revenue on this.

8. We have heard rival contentions and gone through facts and circumstances of the case. We noted from the facts of the case as narrated in assessment order and the order of CIT(A) and in the original assessment order and reasons recorded that the reason itself speaks that the information is culled out by AO from the assessment records which was supplied by assessee and is part of return of income filed originally, which was the subject matter of assessment u/s.143(3) of the Act. We do not agree with the arguments of ld.Senior DR as regards to case law cited of Hon'ble Supreme Court in the case of Girilal & Co., *supra,* because in the present case there is no question of disclosure or non-disclosure because the AO has specifically pointed out the failure on the part of the assessee to disclosure fully and truly all material facts relating to assessment in view of proviso. In the present case, the opening balance as on 31.03.2010 carried over as on 01.04.2011 in regard to WDV was available with the Department even though in the folder of assessment year 2010-11, the AO should have taken cognizance of

the same while framing assessment for the relevant assessment year 2011-12. This issue is no *res integra* and we have already adjudicated this issue and Co-ordinate Bench of Chennai Tribunal in the case of Crown Real Estate Pvt. Ltd., in ITA No.353/CHNY/2023, wherein the Tribunal relying on the decision of Hon'ble Supreme Court in the case of CIT vs. Foramer France, (2003) 264 ITR 566 has considered the issue as under:-

> *7. We have heard rival contentions and gone through the facts and circumstances of the case. Admittedly, the AO during the course of assessment proceedings was aware about the share application money received by assessee because the audited accounts were available before him during the course of original assessment proceedings. From the reasons recorded, there is no iota of thinking or words in the reasons recorded that there is any failure on the part of the assessee to disclose fully and truly all material facts relating to the income for the relevant assessment year. Admittedly the reopening is beyond 4 years because relevant assessment year involved is 2013-14 and notice u/s.148 of the Act is issued on 29.03.2019, which means admittedly it is beyond 4 years. 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 29.03.2019, 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:-*
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> 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 :

"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."

7.1 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.

9. 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.

10. Coming to the merits of the case, since we have quashed the reassessment on reopening, we need not to adjudicate the issues on merits. In term of the above, the appeal of the assessee is allowed.

11. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 22nd March, 2024 at Chennai.

Sd/-	Sd/-
(मनोज कुमार अग्रवाल)	(महावीर सिंह)
(MANOJ KUMAR AGGARWAL)	**(MAHAVIR SINGH)**
लेखा सदस्य/ACCOUNTANT MEMBER	उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,
दिनांक/Dated, the 22nd March, 2024

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त /CIT
4. विभागीय प्रतिनिधि/DR
5. गार्ड फाईल/GF.