

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

श्री महावीर सिंह, उपाध्यक्ष एवं श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष
**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **212/CHNY/2019**

निर्धारण वर्ष/Assessment Year: 2010-11

Sical Logistics Ltd.,
73, Armenian Street,
Chennai – 600 001.

PAN: AAACS 3789B

(अपीलार्थी/Appellant)

**The Deputy Commissioner
of Income Tax,**
Vs. Company Circle 6(3),
Chennai -34.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri R. Vijayaraghavan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri Suresh Guduri, JCIT

सुनवाई की तारीख/Date of Hearing : 06.05.2024
घोषणा की तारीख/Date of Pronouncement : 10.05.2024

आदेश /ORDER

PER MAHAVIR SINGH, VICE PRESIDENT:

This appeal by the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-15, Chennai in ITA No.258/2017-18/CIT(A)-15 dated 30.11.2018. The assessment was framed by the Deputy Commissioner of Income Tax, Corporate Circle 6(2), Chennai for the assessment year 2010-11 u/s.143(3) r.ws. 147 r.w.s.92CA(4) of the Income Tax Act, 1961 (hereinafter the 'Act') vide order dated 29.01.2018.

2. The first issue in this appeal of assessee is as regards to assumption of jurisdiction for reopening of assessment when additions was made on account of issue other than the one included in the reason for reopening and no addition is made for which reason was recorded for reopening for alleged escapement of income. For this, assessee has raised the following grounds:-

Reopening is bad in law

2. The Commissioner of Income tax (Appeals) erred in confirming the reopening of the assessment as correct.

2.1 The Commissioner of Income tax (appeals) ought to have appreciated that reopening of assessment u/s 148 is not correct when the facts were already examined and considered u/s 143(3). Reopening in this case only amounts to change in the opinion of the assessing officer and no further evidence were found to prove that the income of the assessee is concealed. Reliance is placed in this regard on the decision of Supreme Court in the case of CIT vs. Kelvinator.

2.2 The Commissioner of Income tax (Appeals) ought to have held in the present case that the additions on account of issue other than the one included in the reason for re-opening the assessment is not correct.

3. Brief facts are that the assessee filed its original return of income for the relevant assessment year 2010-11 on 07.10.2011. Subsequently, the return of income was revised on 22.03.2012 admitting the same income as admitted in the original return of income. The assessee's case was selected for scrutiny assessment and assessment was completed u/s.143(3) of the Act vide order

dated 31.03.2013. Subsequently, the assessee's case was reopened u/s.147 r.w.s. 148 of the Act and notice u/s.148 of the Act dated 09.03.2016 was issued. The assessee before us now filed reasons recorded, in its paper-book at page 25 and read out the reasons and the relevant reads as under:-

Reasons for reopening:

M/s SICAL LOGISTICS LTD PAN:AAACS3789B A.Y 2010-11

The assessee filed R/I for A.Y 2010-11 showing Income of Rs.29,45,14,493/- and the same was completed u/s 143(3) determining a income of Rs.2,27,98,06,950/-.

Information from the ITO, Corporate Ward 3(4), was received. From the information, the assessee company during the F.Y relevant to the A.Y 2010-11 has sold two properties to M/s Velmurugan Shelters P Ltd. The details are as under:

Sl. No.	Name of the Seller	Name of the purchaser	Survey No.	Extent of land	Guideline value in Rs.	Market leave in Rs.
1	M/s. Sical Logistics Ltd	M/s. Velmurugan Shelters P Ltd	462/2	27 cents	9417600	4289220
2	M/s. Sical Logistics Ltd	M/s. Velmurugan Shelters P Ltd	461 part New S.No.461/1A1A	4 acres 11 cents	71678400	47250780
					81096000	51540000

There is no deletion of free hold land or building in the fixed asset schedule. There is no income shown with respect to sale of land in profit and loss account and no capital gains was offered during the A.Y 2010-11.

The total sale consideration of Rs.5,15,40,000/- is much below the fair market value of Rs.8,10,96,000. Hence the provisions of sec.50C of the IT act,1961 are attracted in this case. The total income escapement amounts to Rs.8,10,96,000/- and this needs to be added back to the total income.

Hence ,I have reasons to believe that income has escaped assessment within the meaning of sec.147 of the IT act,1961.”

3.1 The Id.counsel for the assessee then took us through the reassessment order framed u/s.143(3) r.w.s. 147 r.w.s. 92CA(4) of the Act dated 29.01.2018 (the impugned order arising out of this order) and stated that only addition made in this assessment order is TP adjustment i.e., downward adjustment of Rs.9,85,00,000/- to the TP for determination of ALP. The Id.counsel for the assessee then took us through the reasons recorded and stated that only reason recorded was that there is under consideration or no income is shown in respect of sale of land in the profit & loss account and no capital gain was offered during the relevant assessment year 2010-11. The Id.counsel stated that there is no addition made on account of income escaped as per reasons recorded. Once there is no addition made in respect to reasons recorded, no reassessment order for making addition of other income can be made. Accordingly, reassessment order is bad in law and hence, to be quashed. The Id.counsel for the assessee drew our attention to the judgment of Hon'ble Bombay High Court in the case of CIT vs. Jet

Airways reported in [2011] 331 ITR 236. The Id.counsel stated that this judgment of Hon'ble Bombay High Court in the case of Jet Airways, *supra* was followed by Hon'ble High Court of Madras exactly on identical circumstances in the case of Martech Peripherals Pvt. Ltd., vs. DCIT reported in [2017] 394 ITR 0733, wherein Hon'ble High Court held as under:-

21.1.To put it plainly, the purported income discovered subsequently during the course of reassessment proceedings, can be brought to tax, only, if the escaped income, which caused, in the first instance, the issuance of notice under Section 148 of the Act, is assessed to tax.

22. Explanation 3, to my mind, supports this approach, which emerges upon a plain reading of the said provision, along with the main part of Section 147 of the Act. The emphasis in this behalf is on the expression "and also bring to tax" appearing in the main part of Section 147 in relation to the right of the Revenue to assess taxable income discovered during reassessment proceedings. In my view, Explanation 3, clearly, expounds that the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment and such other issue, that comes to his notice subsequently, albeit, in the course of proceedings held under Section 147 of the Act. In other words, if, notice for reopening of the assessment was issued on one aspect, and in the course of reassessment proceedings another aspect was discovered, the reassessment order would be valid, only if, the aspect, which led to the reopening of assessment, continues to form part of the reassessed income.

3.2 The Id.counsel also drew our attention to the ratio laid down in the case of Jet Airways, *supra* as extracted in the judgment of Hon'ble Madras High Court in para 23.3 to 23.4 as under:-

"23.3. This aspect of the matter has also been brought to fore by the Bombay High Court in : CIT V. Jet Airways - [2011] 331 ITR 236 (Bom).

23.4. The relevant observations made in this behalf are extracted hereafter:

"...However, Explanation 3 does not and cannot override the necessity of fulfilling the conditions set out in the substantive part of section 147. An Explanation to a statutory provision is intended to explain its contents and cannot be construed to override it or render the substance and core nugatory. Section 147 has this effect that the Assessing Officer has to assess or reassess the income ("such income") which escaped assessment and which was the basis of the formation of belief and if he does so, he can also assess or reassess any other income which has escaped assessment and which, comes to his notice during the course of the proceedings. However, if after issuing a notice under section 148, he accepted the contention of the assessee and holds that the income which he has initially formed a reason to believe had escaped assessment, has as a matter of fact not escaped assessment, it is not open to him independently to assess some other income. If he intends to do so, a fresh notice under section 148 would be necessary, the legality of which would be tested in the event of a challenge by the assessee....."

According to Id.counsel, the issue of assessee i.e., assuming jurisdiction u/s.147 r.w.s 148 of the Act and not making addition on the reasons recorded in issuance of notice u/s.148 of the Act, making addition on some other grounds, the order is bad in law.

4. When these facts were confronted to Id. Senior DR, he could not controvert the above fact situation.

5. We have heard rival contentions and gone through facts and circumstances of the case. We noted that the facts in the present case are clear. Admittedly, in the present case, the AO has reopened the assessment for assessing capital gain on sale of land

or profit on sale of land, as noted in the reasons recorded above. But, while framing reassessment u/s.143(3) r.w.s.147 of the Act, he has not touched upon this point and added TP adjustments made for determination of ALP of the assessee. The circumstances exactly fit in the case of Hon'ble Madras High Court in the case of Martech Peripherals Pvt. Ltd., vs. DCIT, *supra* and Hon'ble Bombay High Court in the case of CIT vs. Jet Airways, *supra*. On perusal of Section 147 of the Act would show that, if, the Revenue makes an attempt to reopen the assessment, all that the Assessing Officer has to show is that, AO has reason to believe that any income chargeable to tax has escaped assessment for the concerned assessment year and while doing so, AO is also empowered to assess any other income, which has escaped assessment and, which comes to AO's notice, subsequently, albeit, during course of the assessment proceedings. Careful reading of Section 147 of the Act would show that it empowers an Assessing Officer to reopen the assessment, if, AO has reason to believe, that any income chargeable to tax has escaped assessment for the relevant year, "and also bring to tax", any other income, which may attract assessment, though, it is brought to AO's notice, subsequently, albeit, in the course of the reassessment proceedings. To put it plainly, the purported income discovered subsequently during the

course of reassessment proceedings, can be brought to tax, only, if the escaped income, which caused, in the first instance, the issuance of notice under Section 148 of the Act, is assessed to tax. In the present case before us admittedly the AO has reopened the assessment for assessing capital gain on sale of land or profit on sale of land, as noted in the reasons recorded above and while framing reassessment u/s.143(3) r.w.s.147 of the Act, he has not touched upon this issue and added TP adjustments made for determination of ALP of the assessee. In view of the above, we quash the reassessment order and allow this appeal on jurisdictional issue.

6. As regards to merits of the case, since we have adjudicated the jurisdictional issues in favour of assessee, we need not go into the merits of the case, which has become academic.

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

Order pronounced in the open court on 10th May, 2024 at Chennai.

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(महावीर सिंह)

(MAHAVIR SINGH)

उपाध्यक्ष /VICE PRESIDENT

चेन्नई/Chennai,

दिनांक/Dated, the 10th May, 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.