

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

श्री मनु कुमार गिरि, न्यायिक सदस्य एवं श्री जगदीश, लेखक सदस्य के समक्ष
BEFORE SHRI MANU KUMAR GIRI, JUDICIAL MEMBER AND
SHRI JAGADISH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.1534/Chny/2024
निर्धारण वर्ष /Assessment Year: 2013-14

Golden Vats Pvt. Ltd.,
New No.272, 3rd Floor,
Avvai Shanmugam Salai,
Gopalapuram, Chennai – 600 086.

Vs. The Asst. Commissioner of
Income Tax,
Central Circle-3(2),
Chennai.

[PAN: AACCG 9782G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri T.S. Lakshmi Venkatraman, FCA
: Shri N.S. Phanidharan, JCIT

सुनवाई की तारीख/Date of Hearing

: 18.09.2024

घोषणा की तारीख /Date of Pronouncement

: 11.12.2024

आदेश / ORDER

PER JAGADISH, A.M :

Aforesaid appeal filed by the assessee for Assessment Year (AY) 2013-14 arises out of the order of Commissioner of Income Tax (Appeals), Chennai-20 [hereinafter "CIT(A)"] dated 30.03.2024 in the matter of assessment framed by the Assessing Officer [AO] u/s. 147 r.w.s 144 of the Income-tax Act,1961 (hereinafter "the Act") on 29.09.2021.

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2. The grounds of appeal raised by the assessee are as under:

"1. The order of CIT(Appeals) in confirming the disallowance of Rs.3,13,31,857/- in respect of sales promotion expenses incurred by the assessee is against the facts of the case and is not legally maintainable.

2. On the facts and circumstances of the case, the reopening of assessment is bad in law in as much as the reopening is not based on any fresh or new material coming into the possession of the AO.

3. On the facts and circumstances of the case the reopening of the assessment after four years from the end of the assessment year in respect of an assessment completed u/s 143(3) of the Act, on the same set of facts available with the AO at the time of completion of original assessment, is bad in law.

4. On the facts and circumstances of the case the assessment completed without issue of notice u/s 143(2) is bad in law, when the return filed in response to notice u/s 148 is a valid return.

5. On the facts and circumstances of the case the first appellate authority is not justified in dismissing the appeal of the appellant even when a specific ground was raised in respect of approval u/s 151 given by the competent authority.

6. On the facts and circumstances of the case the first appellate authority is not justified in not giving a finding whether the reopening is on the basis of any audit objections and if that being the case the reopening is bad in law.

7. The lower authorities are not justified in disallowing a sum of Rs.3,13,31,857/- which has been incurred by the assessee towards sales promotion expenses.

8. In view of the above grounds and other submissions to be made at the time of Appeal hearing, the order u/s 250 may be cancelled and justice rendered."

3. The main ground of appeal in this appeal of assessee is against confirming the reopening of assessment and upholding the disallowances of sales promotion expenses of Rs.3,13,31,857/- in the order passed u/s. 147 of the Act.

4. The brief facts of the case are that the assessee-company is engaged in the manufacturing of liquor and selling it exclusive to TASMAC. The assessee has filed its return of income of Rs.16,46,47,880/- on 29.09.2023. The case was selected for scrutiny and assessment was completed u/s. 143(3) of the Act on 29.03.2016 assessing total income of Rs.17,58,67,870/-. The assessment order was further rectified by order passed on 15.05.2016 revising assessed income of Rs.17,13,87,940/-. The Assessing Officer subsequently reopened the assessment by recording the reason that the assessee has debited a sum of Rs.3,13,31,857/- towards sales promotion expenses and since, assessee-company is engaged in the business of manufacturing of Indian Made Foreign Liquor and could sell the products only through TASMAC, which is a Government organization, the expenses in the nature of sales promotion are not allowable as deduction. The A.O completed the assessment by passing order u/s.144 r.w.s 147 of the Act making disallowance of sale promotion expenses of Rs.3,13,31,857/-.The assessee has challenged reopening of assessment before the Ld. CIT(A), who confirmed the reopening and disallowances made u/s. 37 of the Act.

5. The Ld. Authorized Representative (A.R) of the assessee challenging the reopening of assessment has argued that the assessment in this case was completed u/s. 143(3) of the Act on 29.03.2016 by examining books of accounts, profits and loss account and tax audit report and the A.O has reopened the assessment beyond four years. The Ld. AR argued that the A.O has not recorded the reason that income chargeable to tax has escaped assessment for the failure on the part of the assessee to disclose fully and truly of all material facts necessary for assessment as required by the first proviso to section 147 of the Act. The Ld. AR has also argued that this is a case of merely change of opinion and reopening is not sustainable in view of the decision of Hon'ble Supreme Court in the case of CIT vs. Kelvinator India Ltd. [2010] 320 ITR 561 (SC) and the decision of Hon'ble Jurisdictional High Court in the case of ITO v. Shivsu Canadian Clear Waters Ltd. in W.A No.2460 of 2021 (Mad.). The Ld. A.R has also submitted that the A.O has not issued notice u/s. 143(2) of the Act and therefore, the assessment is bad in law.

6. The Ld. Departmental Representative (DR), on the other hand, has supported the order of Ld. PCIT and submitted that the reopening has been done on the basis of subsequent assessment order passed for A.Y 2017-18 and expenses for sales promotion expenses on

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TASMAC is not allowable as the payment is not for business purposes and covered by Explanation 1 to Section 37 of the Act.

7. We have heard the rival submissions, and perused the materials available on record. The A.O has reopened the assessment recording the reason that the assessee has debited a sum of Rs.3,13,31,857/- towards sales promotion expenses and since, the assessee-company is engaged in the business of manufacturing of IMFL and could sell the product only through TASMAC, which is a government organization, the expenses in the nature of sales promotion are not allowable as deduction. The assessee has challenged the reopening of assessment on the ground that assessment has been reopened beyond four years without recording mandatory satisfaction that the escapement of income is by failure on the part of the assessee. The assessee has also argued that all the expenditure were already submitted during earlier scrutiny assessment u/s. 143(3) of the Act, so reopening is change of opinion which is not permissible as per decision of Supreme Court in the case of Kelvinator india Ltd., supra.

8. The assessment in this case has been reopened beyond four years. As per first proviso to Section 147 of the Act, wherein assessment under sub section (3) of Section 143 of the Act has been

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made for the relevant assessment year no action shall be taken u/s. 147 of the Act after the expiry of four years from the end of relevant assessment year unless any income chargeable to tax as escaped assessment for such assessment year by a reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment. The assessee in the present case, in the return of income and during assessment proceedings has submitted details of all expenditure including sale promotion expenses. The A.O while reopening the assessment has not recorded the reason that escapement is by the failure on the part of the assessee to disclose fully and truly all material facts. The ITAT, Delhi in the case of M/s. Plaza Cable Industries Ltd. vs. DCIT in ITA No.1485/Del/2014 dated 02.06.2022 (Del-Trib.), on similar facts, has held as under:

“10. Adverting further, as noted earlier, the reopening in the instant case is also governed by the embargo placed by 1st proviso to Section 147 of the Act. A completed assessment is a valuable right and cannot be lightly ignored. The Assessing Officer has not even cared to allege any kind of failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment. From the reasons recorded, it is not known, what material facts were not brought on record by the assessee in the course of original assessment. The salutary burden placed on the Assessing Officer under the 1st proviso is not discharged at all. The jurisdiction under Section 147 was exercised in a most flippant and nonchalant manner. It is axiomatic that a reopening of completed assessment is special and extra-ordinary and carries civil consequences. Hence, the Assessing Officer is expected to exercise the jurisdiction under Section 147 with scrupulous care. The completed assessment has been reopened in the instant case in a very cursory manner without satisfying any of the conditions of Section 147 of the Act. Ostensibly, the competent authority under Section 151 of the Act

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has formed 'satisfaction' of escapement on such flimsy reasons mechanically. Such symbolic compliance of approval of superior authority under Section 151 cannot be countenanced. 11. The jurisdiction assumed under Section 147 in this backdrop is ex-facie vitiated and thus requires to be struck down at the threshold. The impugned assessment framed under Section 147 r.w. Section 143(3) is clearly bad in law in the absence of any valid jurisdiction. Consequently, the impugned assessment order dated 04.11.2011 framed in pursuance of nonest jurisdiction stands quashed."

9. As the basic ingredient of Section 147 of the Act is not satisfied and jurisdiction is central to decide the issue, we hereby quash the assessment order.

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

Order pronounced on 11th December, 2024.

Sd/-
(मनु कुमार गिरि)
(Manu Kumar Giri)
न्यायिक सदस्य / Judicial Member

Sd/-
(जगदीश)
(Jagadish)
लेखा सदस्य / Accountant Member

चेन्नई/Chennai, दिनांक/Dated: 11th December, 2024.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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