

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI**

**BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER  
AND  
SRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

**ITA No.6409/Mum/2013**

(A Y: 2004-05)

The Dy. Commissioner of Income Tax-10(3), Room No.451, 4 <sup>th</sup> Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai 400 020.	Vs.	M/s. Colgate Palmolive (India) Ltd. Main Street, Hiranandani Garden, Powai, Mumbai 400 076
<b>PAN: AAACC 4309B</b>		
<b>Appellant</b>	..	<b>Respondent</b>
<b>Appellant by</b>	..	<b>Shri K.Mohan Das (DR)</b>
<b>Respondent by</b>	..	<b>Shri Hiro Rai</b>
<b>Date of hearing</b>	..	<b>25-07-2016</b>
<b>Date of pronouncement</b>	..	<b>25-07-2016</b>

**ORDER**

**PER MANOJ KUMAR AGGARWAL,AM:**

The instant appeal has been filed by the Revenue for assessment year 2004-05 against the order of the Commissioner of Income Tax (Appeals)-22, Mumbai [in short ‘CIT (A)’] dated 01-08-2013 which in turn has arisen out of Assessment Order dated 20-10-2011 passed by Assessing Officer [AO] u/s 144 read with section 147 of the Income Tax Act, 1961 [in short “the Act”]. The following grounds of appeal have been raised by the Revenue:-

- “1. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in holding that assessment completed u/s 147 is bad in law.
2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in not taking into consideration the reasons stated by AO for reopening in respect of interest of income refund shown by assessee as business income rather to be assessee as income from other sources.
3. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in not taking into consideration the reasons stated by AO for reopening of disallowance u/s 14A to be made on expenses attributable to earn exempt income on reasonable basis.
4. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in holding that the assessment u/s 147 is bad in law without taking into consideration that if a single

*valid reason is available for reopening the assessment u/s 147, the assessment order is valid”.*

2. The facts, in brief, are that the assessee is a Resident Public Limited Company who had filed its Return of Income for assessment year 2004-05 during October, 2004 declaring total income of Rs.158,35,51,450/-. The return was initially processed u/s 143 (1) and later on taken up for scrutiny assessment u/s 143 (3) of the Act. The assessment u/s 143 (3) of the Act was completed on 27-12-2006 assessing the total income of the assessee at Rs.159,64,49,149/-.

2.1 Subsequently, the case was sought to be reopened u/s 147 by the AO vide his notice u/s 148 of the Act dated 25-02-2011. The reasons cited for reopening were as follows:-

*“In the instant case, assessment was completed u/s 143(3) of the Act on 27.12.2006 assessing the total income at Rs.159,64,49,150. Subsequently it is noticed that while claiming deduction u/s 80 HHC of the Act, the assessee has considered interest income of Rs.19,50,56,232 as business income whereas the said income is not derived from the business activity. The interest income also includes interest on income tax refund of Rs.25,63,165/-. The interest income is taxable income from other sources and hence should have been totally excluded from the business profits on which deduction u/s 80 HHC is claimed. The assessee has thus claimed excess deduction of Rs.31,61,702/- u/s 80HHC by treating the interest income as business income.*

*Further, the assessee has claimed interest income of Rs.6,59,73,156 as exempt u/s 10 of the Act. But no expenditure incurred in relation to the said income is excluded while computing the total income. As per the provisions of section 14A of the Act, no expenditure incurred in relation to the income not forming part of the total income is to be allowed as deduction. It has been judicially held in the case of CIT v. United General Trust Ltd. (200 ITR 488 SC) that proportionate management expenses should be deducted from the gross tax free income. Thus the assessee has claimed excess deduction to the extent of expenditure of Rs.36.64 lakhs as under:*

*Exempt income x Total management exp.*  
*Total income*

*Therefore, I have reason to believe that income to the extent of Rs.68,25,702/- has escaped assessment within the meaning of section 147 of the Act due to failure on the part of the assessee to disclose truly and fully full material facts.”*

2.2 After considering the objections and submissions of the assessee, the AO completed the assessment u/s 144 read with section 147 of the Act vide his order dated 20-10-2011 and reassessed the total income at Rs.160,36,02,040/-.

2.3 Aggrieved, the assessee preferred appeal against the said order with the CIT (A) and inter alia, objected to reopening of assessment on the ground that reopening is bad in law as notice has been issued beyond 4 years from the end of the relevant assessment year and there is no failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment during original assessment proceedings u/s 143(3). After considering the objection of the assessee, the CIT (A) held the reopening to be *void-ab- initio* and allowed the appeal of the assessee vide his order dated 01-08-2013. Aggrieved by the stand of the CIT (A), the Revenue is in appeal before us.

3. Before us, the learned DR relied upon the stand of the AO whereas the learned AR made various submissions to support the action of the CIT (A). The learned AR has drawn our attention to various points considered by the AO during original assessment proceedings and contended that no new material has come to the possession of the AO so as to justify the reopening and there is no failure on the part of the assessee to disclose truly and fully the material facts necessary for his assessment.

4. We have considered the various contentions raised and also perused the materials placed on record. The assessment year in question is 2004-05. The original assessment u/s 143 (3) of the Act was completed on 27-12-2006. Notice for reopening was issued on 25-03-2011 which is clearly beyond the prescribed period of four years from the end of the relevant assessment year. First of all, it would be prudent to reproduce the relevant proviso of Section 147 which is as follows:-

*“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”.*

Therefore, Section 147 provides that when an assessment is completed u/s 143 (3) of the Act then it can be reopened beyond four years from the end of the relevant assessment year, only upon satisfaction of following conditions: -

(i) the assessee has failed to file the prescribed return of income; or

(ii) the assessee has failed to disclose fully and truly all material facts necessary for the assessment

The assessment is sought to be reopened by the AO mainly on two grounds which are as follows:-

- (1) The assessee has considered that income of Rs.19,50,56,232/- as business income whereas the said business income is not derived from business activity. Besides this, interest income also included interest on income tax refund of Rs.25,63,165/- and both these figures were required to be excluded from business income u/s 80 HHC. The assessee has thus claimed excess deduction u/s 80 HHC by treating interest income as business income.
- (2) The assessee had failed to make 14A disallowance on interest free income earned by it during the year.

Perusal of records shows that the assessee has disclosed all material facts at relevant places during original assessment proceedings u/s 143 (3) of the Act. The AO himself has computed deduction u/s 80 HHC and treated interest income to be part of business income. The return of income was accompanied with audit report in form 3CA and 3CB, Audited Profit & Loss Account and Balance Sheet u/s 44AB, report in form No.3CEB and report in form No.10CCAC, for claiming deduction u/s 80 HHC and clearly identified in compilation. From the assessment Order and form 10CCAC, it could be ascertained that all the relevant information connected to computation of 80 HHC deduction were available before the AO during the course of original assessment proceedings itself. The AO thoroughly examined these documents and after proper application of mind, got fully satisfied and then allowed the claim of the assessee.

5. Similarly, the factum of claiming of tax free income was also available with the AO during the original assessment proceedings by way of disclosure in Notes to Return of Income” and investment schedule forming part of the Balance Sheet as at 31<sup>st</sup> March, 2004. The complete details about tax free investment were also submitted during the original assessment proceedings. All the above facts show that there was no failure on the part of the assessee to fully and truly disclose all the material facts. Thus, reassessment is being sought by the AO on change of opinion which is not permissible. No new tangible material has come to the knowledge of the AO so as to justify the reopening. The following observation of the Hon’ble Apex Court in the case of CIT Vs. Kelvinator of India Ltd. 320 ITR 561 would be relevant here:-

*“Assessing Officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfillment of certain preconditions and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place. One*

*must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, the Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief".*

Further, the Hon'ble apex Court in the case of CIT vs. Foramer France (2003) 264 ITR 566 (SC) has clearly laid down the principle that where there is no failure on the part of the assessee to disclose material facts, the reassessment proceedings after the expiry of four years is not possible in view of the provisions of s. 147 of the Act.

In the circumstances of the case and after appreciating the statutory provisions and judicial pronouncements, we conclude that the appeal of the Revenue be dismissed.

6. **In the result, the appeal of the Revenue is dismissed.**

Order pronounced in the open court on 25-07-2016

-Sd/-

-Sd/-

**(MAHAVIR SINGH)  
JUDICIAL MEMBER**

**(MANOJ KUMAR AGGARWAL)  
ACCOUNTANT MEMBER**

Mumbai, Dated 25/07/2016  
*Lakshmikanta Deka/Sr.PS*

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

Assistant Registrar  
**ITAT, MUMBAI**

		Date	Initial	
	Dictation pad attached with the Draft Order	No(hand-written script)		
1.	Draft dictated on	25/07/16		Sr.PS
2.	Draft placed before author	25/07/16		Sr.PS
3.	Draft proposed & placed before the second member			AM
4.	Draft discussed/approved by Second Member.			JM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			

