

IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH MUMBAI
BEFORE SHRI D.KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.3033/Mum/2013
(Assessment Year : 2004-05)

Dy. CIT-6(2) Room No.563, Aayakar Bhavan M.K. Road, Churchgate Mumbai-400020.	Vs.	M/s. Classic Stripes Pvt. Ltd. 164, Senapati Bapat Marg, Matunga (W) Mumbai-400 016.
PAN/GIR No.: AAACC 5076 F		
(Appellant)	..	(Respondent)

Revenue by : Shri Ravindra Sindhu (DR)
Assessee by : Shri Reepal G. Tralshawala & Manish Jaju-AR

Date of Hearing : 22/02/2016
Date of Pronouncement: 29/02/2016

ORDER

PER PAWAN SINGH, JM:

The present appeal is filed by the Revenue against the order of the Id. Commissioner of Income tax(Appeals) -12, Mumbai dated 02.01.2013 in respect of assessment year 2004-05. The grounds raised by the revenue are as follows:-

1. "On. the facts and circumstances of case and in law, the Ld. CIT(A) erred in allowing assessee's ground that reopening of assessment was not as per law. The ld. CIT(A) failed to appreciate that case was covered by Explanation 1 to Sec. 14 7 which clearly provides that production before the AO of account books or other evidence from which material evidence could with due diligence have been discovered by the AO will not necessarily amount to disclosure within the meaning of the foregoing proviso of section 147.

2.1 On the facts and circumstances of case and in law, the Ld. CIT(A) erred in allowing assessee's claim u/ s.80 IB of Rs.1,25, 73,581/-.

2.2 On the facts and circumstances of case and in law, the Ld.CIT(A) erred in allowing deduction u/ s. 80 IB, with regard to insurance refund, insurance claimed receipt and credit receipt from MSEB when these receipts are not "derived" from industrial undertaking.

3. The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

4. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary."

2. The brief facts of the case are, that the assessee filed return of income for the assessment year 2004-05 on 30.04.2004 declaring total income at Rs.16,96,14,593/- .The assessee has filed revised return of income on 28.3.2005 and declared total income at Rs.17,02,21,020/-. The assessment was completed u/s. 143(3) on 15.9.2005 assessing total income of the assessee at Rs.17,02,79,020/-. The assessment was re-opened by order sheet dated 19.3.2009 and notice dated 20.3.2009 u/s.148 was issued to the assessee .In response, the assessee filed return of income declaring total income at Rs.17,02,79,020/-.

3. The assessee demanded reasons recorded for re-opening of assessment which were provided to the assessee on 01.04.2011 and read as under :-

"..... It is seen from the records that the profit. of undertaking was inclusive of Rs. 10,44,616/- being Insurance refund, Rs. 3,99,40,031/- being insurance claim received and Rs. 9,27,190/- being credit received from MSEDCL on sale of unit electricity generated by wind mills. Since these income cannot be termed as derived from industrial undertaking and hence should have been excluded from the profit of undertaking before allowing deduction under section 80IB. Omission to do so has resulted in excess allowance of deduction of Rs. 1,25,73,581/- (being 30% of Rs. 4,19,11,937). "

4. The Assessing Officer while making assessment made an addition of Rs.1,25,73,581/- on account of deduction u/s. 80IA (being 30% of Rs.4,19,11,937/-) and completed the assessment u/s. 143(3) r.w.s. 147 of the Act vide assessment order dated 23.12.2011. Against the order of assessment, the assessee has filed an appeal challenging the order of the Assessing Officer before the FAA/CIT(A) reasoning that the re-opening of assessment was after expiry of four years of the original assessment, that the assessment is not valid and that the same was issued without recording reasons and that any allegation to the fact that there was any failure on the part of the assessee to disclose fully and truly all material facts, that the Assessing Officer has not recorded the finding that such escapement was on account of omission or commission or failure to disclose all material facts by the assessee .

5. The CIT(A) while disposing off the appeal of the assessee, has accepted the ground raised in the appeal, in the impugned order, dated 17.01.2012 against which the present appeal is filed before us by the Revenue.

6. We have heard the Id. Departmental Representative (DR) as well as the Id. Authorised Representative (AR). The DR supported the order of the Assessing Officer and argued that reasons recorded by the Assessing Officer were supplied to the assessee and the income which escaped assessment was chargeable to tax and addition made in the assessment was in accordance with law. The Id. AR argued that all the material was placed before the Assessing Officer and there was no new material on the basis of which the Assessing Officer may arrive at a conclusion that any income which was chargeable to tax has escaped assessment. The Id. AR further argued that return of income was filed on 30.4.2004 and notice of re-opening was issued on 20.3.2009 which was beyond the prescribed period of four years and re-opening is invalid, hence the order passed by the Assessing Officer becomes void abinitio

7. Ld. CIT(A) while dealing with this issue has concluded that Assessing Officer has re-opened the case on the basis of material available on record from time to time of the original assessment proceedings and, further concluded that the assessee has been able to explain that the re-assessment in its case by issuing a notice u/s. 148 on 15.2.2011 cannot be held as valid, as the said re-assessment is on the basis of change of opinion. There was no new material fact in possession of the Assessing Officer, the material which was available has been re-examined by the Assessing Officer and held that the assessment done u/s. 147 of the Act cannot be upheld due to the fact that the issue of said notice was contrary to the provisions of said section and the Assessing Officer had nowhere brought on record that income chargeable to tax has escaped assessment, due to the failure on part of the assessee, to disclose all true facts of each case, and allow the grounds against the Revenue.

8. We have further noticed that the assessee has placed on record copy of the annual account, computation of the total income, audit report u/s. 80IB for the relevant assessment year. The Assessing Officer has not disclosed or brought any new material or information on the basis of which it can be concluded that any income has escaped assessment. Hence, the re-opening u/s. 147 was invalid.

9. In the above discussion, we do not find any illegality or infirmity in the order passed by the Id. CIT(A), as such Ground No.1 raised in the present appeal, is dismissed. Since, re-opening of the assessment has already been held invalid by the Id. CIT(A) and which has been upheld by us, so, the addition made in the impugned assessment order u/s. 155(3) r.w.s. 147 automatically becomes infructuous, hence, other grounds raised in the present appeal do not require any adjudication.

10. In the result appeal filed by the Revenue is dismissed.

Order pronounced in the open court on this 29/02/2016.

Sd/-

Sd/-

(D.KARUNAKARA RAO)
ACCOUNTANT MEMBER

(PAWAN SINGH)
JUDICIAL MEMBER

Mumbai; Dated : 29 /02/2016

Jv, Sr.PS

Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

//True Copy/

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai