

IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH 'G' NEW DELHI

BEFORE : SHRI BHAVNESH SAINI, JUDICIAL MEMBER &
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA No. 1190/Del./2013
Asstt. Year : 2002-03

Samsung India Electronics Pvt. Ltd., vs. Addl. CIT, Range-7,
3rd Floor, Tower-C, Vipul Tech Square, New Delhi.
Sector 43, Golf Course Road, Gurgaon.
(PAN: AAACS 5123K)

ITA No. 1198/Del./2013
Asstt. Year : 2002-03

Addl. CIT, Range-7, vs. Samsung India Electronics Pvt. Ltd.,
New Delhi. 3rd Floor, Tower-C, Vipul Tech Square,
(Appellant) Sector 43, Golf Course Road, Gurgaon.
(Respondent)

Assessee by : Sh. Rupesh Jain, Advocate &
Ms. Bhavita Kumar, Advocate
Revenue by : Sh. S.S. Rana, CIT/DR
Date of hearing : 05.04.2017
Date of pronouncement : 12 .04.2017

ORDER

Per L.P. Sahu, Accountant Member:

These are two cross appeals filed by the assessee and the Revenue against the order of Id. CIT(A)-X, New Delhi dated 27.12.2012 for the assessment year 2002-03. Both the parties have raised following grounds in their respective appeals :

Grounds raised by assessee :

Ground No.1:

1. That the Ld. CIT (Appeals) erred on facts and in law in not holding that the reassessment order dated 16.12.2009, passed under section 147/143(3) of the Act was beyond jurisdiction, bad in law and void ab initio.

1.1 That the Ld. CIT(Appeals) erred on facts and in law in not appreciating that the reassessment proceedings were barred by limitation in terms of proviso to section 147 of the Act, as there is no allegation that there was any kind of failure on the part of the assessee to make full and true disclosure of all material facts necessary for assessment for the assessment year under consideration.

1.2 That the Ld. CIT(Appeals) erred on facts and in law in not appreciating that the aforesaid reassessment order was passed on a mere change of opinion on reappraisal of the same facts as were available at the time of original assessment and the said order was therefore, not sustainable in law.

1.3 That the Ld. CIT(Appeals) erred on facts and in law in turning down appellant's claim for change of opinion by merely assuming that no opinion was formed by the AO in original proceedings as AO had not applied his mind to the information given by the appellant.

Ground No.2:

2. That the CIT(Appeals) erred on facts and in law in holding expenditure of Rs.97,83,658 as capital in nature.

2.1 That the CIT(Appeals) erred on facts and in law in not appreciating that the said expenses represented appellant's contribution to dealers/Distributors for their renovating their showrooms and towards cost of hoardings.

2.2 That the CIT(Appeals) erred on facts and in law in holding that the appellant would derive benefit from said expenditure over several years in future."

Grounds raised by Revenue :

"1. The Ld. CIT(A) erred on the facts and in law in deleting the disallowance of Rs.77,57,175/- on account of prior period expenses.

2. The Ld. CIT(A) erred on the facts and in law in deleting the addition of Rs.13,42,55,743/- on account of valuation of closing stock being material in transit."

2. The brief facts of the case are that the original assessment was completed u/s. 143(3) of the IT Act on 21.03.2005, which was assailed in appeal before the ld. CIT(A) and further in appeal before the ITAT. However, on perusal of the original assessment record, the AO noticed some discrepancies and recorded following reasons for re-opening the assessment and issued notice u/s. 148 on 26.03.2009 :

"1. On perusal of records it reveals that the capital expenditure amounting to Rs.97,83,658/- had been debited to P&L A/c, which resulted under assessment of income to that amount and short levy of tax by Rs.48,98,576/-.

2. An amount of Rs.13,42,55,743/- (7,45,86,060 +5,96,69,683), which was material in transit not take in closing stock of the P & L A/c, resulted in under assessment of income and involving short levy of tax by Rs.6,72,20,843/-.

3. Prior period expenses of Rs.77,57,175/- were debited to P & L account on account of adjustments pertaining to earlier year. This mistake resulted in under assessment of tax by Rs.38,83,954/-.

In view of above, I have therefore, reason to believe that an amount of Rs.15,17,96,576/- has escaped assessment within the meaning of section 147(b) of the IT Act, 1961."

3. The assessee objected to the reopening of assessment which was rejected by the Assessing Officer and the assessment was completed by making following additions :

(i). Capital Expenditure(Advertisement & Sales Promotion expenses)	97,83,658/-
(ii). Undervaluation of closing stock For material in transit	13,42,55,743/-
(iii). Prior period expenditure debited to PL A/c.	77,57,175/-

4. Aggrieved by the order of the AO, the assessee appealed before the first appellate authority, who considered the reopening of assessment as valid, but he deleted the disallowance of prior period expenses of Rs. 77,57,175/- and deleted the addition of Rs. 13,42,55,743/- on account of undervaluation of closing stock, but sustained the disallowance of Rs.97,83,658/- as capital expenditure. The assessee was not satisfied with the sustenance of disallowance and the Revenue felt aggrieved by deletion of disallowances, as noted above, hence, these cross appeals on behalf of the assessee and Revenue before the Tribunal.

5. The ld. AR of the assessee submitted that the AO has wrongly reopened the case which was completed u/s. 143(3) beyond the period of four years. The assessee had fully and truly disclosed all material facts, which were necessary for completing the assessment. During the assessment proceedings, the issue involved in ground No. 1 & 3 was already examined by the AO by issuing questionnaire which was duly replied and in respect of issue in ground No. 2, complete facts were disclosed in audited financial statements at schedule 6 under the head 'current assets – loans and advances, inventorised in material in transit – raw materials of Rs.74586060 and finished goods of Rs.5,96,69,683/-, which is available at paper book page No. 5. He has also referred the detailed submissions made before the authorities below for challenging the validity of reopening as well as on merits. He has relied on following case laws :

- (i). CIT vs. Usha International Ltd., 348 ITR 485 (Del.)
- (ii). Wel Intertrade P. Ltd. vs. ITO, 308 ITR 22 (Del.)
- (iii). Haryana Acrylic Manufacturing Co. vs. CIT, 308 ITR 38 (Del.)
- (iv). CIT vs. Indian Farmers Fertilizer Coop Ltd., 171 Taxman 379(Del)
- (v). CIT vs. Kelvinator of India Ltd., 320 ITR 561 (SC).

6. On the other hand, the ld. DR relied on the order of the lower authorities and he strongly supported the validity of reassessment proceedings being within the purview of law. It was submitted that mere producing of balance sheet reflecting the figures does not amount to furnishing of all material

necessary for competing the assessment. The material in transit was not taken into profit and loss account but is reflected in the balance sheet and hence, the AO could not examine the same. Therefore, it is not justified to say that there was no failure on the part of assessee to furnish all material facts necessary for assessment. Reliance is placed on the following decisions :

- (i). Reymond Woollen Mills Ltd. vs. ITO, 236 ITR 34 (SC)
- (ii). Yuvraj vs. Union of India(Bom), 315 ITR 84.
- (iii). R.K. Malhotra vs. ITO, 109 ITR 537 (SC).

7. We have carefully considered the rival submissions, relevant material on record and the decisions cited by both the parties. In the instant case, proceedings u/s 147 of the Act were admittedly initiated by the ld. AO after expiry of four years from the end of relevant assessment year. As such the reassessment in the instant case has to be tested on the anvil of proviso to section 147 of the Act which stipulates as under:

“ 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”

8. In the instant case, on perusal of reasons recorded, we find that the issue mentioned at point No. 1 and 3 of the reasons had already been examined by the Assessing Officer in the original assessment proceedings, thereby giving questionnaire to the assessee and getting its reply. Hence, the reassessment on these points would amount to change of opinion not permissible u/s. 147 of the Act as also in view of various decisions relied by the assessee. The relevant evidences are placed on record before us in the paper book. The material in transit worth Rs.13,42,55,743/-, the issue No. 2, as mentioned in the reasons recorded, was appearing in the balance sheet at schedule 6 under the current assets, loans and advances - inventorised as material in transit - raw materials of Rs.7,45,86,060/- and finished goods Rs.5,96,69,683/- which is placed at page 5 of the paper book. Moreover, on perusal of the reasons recorded, we do not find any mention of the fact that any income had escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for his assessment for that assessment year. Hon'ble Madras High Court in the case of Sri Sakthi Textiles Ltd. v. JCIT, 340 ITR 144, has held that there was no mention in the recorded reasons that the escapement of chargeable income from tax was due to omission or failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment.

Therefore, the notice for re-opening was quashed. Besides, we concur with the submissions of the Ld. AR that no new facts have come to the knowledge of the AO justifying assumption of jurisdiction after four years. The orders of the authorities below also nowhere reveal as to what new facts or material came to their notice which led them to make re-assessment in the instant case. A bare reading of first proviso to section 147, shows that the law merely casts a duty on the assessee to disclose fully and truly all material facts necessary for his assessment which has been done in the instant case. The duty of the assessee does not extend beyond the disclosure of all material facts necessary for his assessment. It is thereafter the duty of AO to properly apply its mind on the facts and law. Accordingly, the assumption of jurisdiction u/s 147 is unsustainable in the instant case in view of the decision of Hon'ble Delhi High Court in the case of Purolator India Ltd. reported in 343 ITR 155 (Del) wherein it has been held as under:-

“10. In the present case, there is no indication that the assessee had failed or omitted to disclose the material or primary facts. These were available on record. The assessing officer, it is stated, had failed to draw correct legal inferences at the time of original assessment from the said primary facts. This is not an error or omission on the part of the respondent-assessee. It is not alleged that the assessee had suppressed, misrepresented or falsified the record/facts. It is not alleged that there was any subsequent factual information on the basis of which it was found that the assessee had not fully disclosed the primary facts or had falsified or disclosed incorrect primary facts.

.... ..

11. Recently in Atma Ram Properties (P.) Ltd. v. Dy. CIT [2011] 203 Taxman 408 (Delhi) and it has been observed as under :

"15. The reasons recorded above do state that the appellant assessee had failed to fully and truly disclose the facts but do not indicate why and how the assessee had failed to make full and true disclosure of the material facts. Mere repetition or quoting the language of the proviso is not sufficient. The basis of the averment/statement should be either stated or should be apparent/lucid/explained from the record.

16. In the present appeal, Explanation (1) to Section 147 also does not help or assist the Revenue. All material facts were available on record and no material facts had to be inferred or discovered by the assessing officer. The assessing officer in spite of being aware of the facts, failed to apply or, at best failed to consider whether Section 2(22)(e) of the Act was attracted. Failure to apply law or a section to admitted facts on record is not covered by Explanation (1). Explanation (1) applies when the assessing officer on the basis of account books or other evidence fails to discover or infer material facts which with due diligence could have been discovered. Explanation (1) deals with failure of the assessing officer to discover or infer all material facts on the basis of books of accounts or other evidence produced by the assessee. Difference between facts and law is well recognized and understood. Explanation (1) reflects the said difference."

9. Similar views have been expressed by Hon'ble Delhi High Court in other several decisions relied by the Id. AR before us. The decisions relied by Id. DR, being distinguishable on facts, are found not applicable to the present case.

10. In view of the aforesaid discussion, we are of the considered opinion that the initiation of proceedings u/s 147 in the present case is bad in law and deserves to be quashed. The consequential additions made by AO, thus, have to be deleted on this count only. Accordingly, the appeal of the assessee deserves to be allowed and that of the Revenue has to fail. The impugned order is accordingly set aside.

11. In the result, the appeal of the assessee is allowed and that of the Revenue is dismissed.

Order pronounced in the open court on 12.04.2017.

Sd/-
(BHAVNESH SAINI)
Judicial Member

Sd/-
(L.P. SAHU)
Accountant Member

Dated : 12.04.2017

*aks/-

Copy of order forwarded to:

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| (1) <i>The appellant</i> | (2) <i>The respondent</i> |
| (3) <i>Commissioner</i> | (4) <i>CIT(A)</i> |
| (5) <i>Departmental Representative</i> | (6) <i>Guard File</i> |

By order

*Assistant. Registrar
Income Tax Appellate Tribunal
Delhi Benches, New Delhi*