

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

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री डि.एस. सुन्दर सिंह, लेखा सदस्य के समक्ष

**BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI D.S.SUNDER SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.1470/Mds/2016
निर्धारण वर्ष /Assessment Year: 2005-06

M/s.Twenty First Century
management Services Ltd.,
G3, No.67, Eldams Road,
Chennai-600 018.

Vs. The Asst. Commissioner of
Income Tax,
Corporate Circle-3(1),
Chennai-600 006.

[PAN: AACT 2397 L]

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Mr.R.Viswanathan, CA

प्रत्यर्थी की ओर से /Respondent by

: Mr.Supriyo Pal, JCIT

सुनवाई की तारीख/Date of Hearing

: 23.01.2017

घोषणा की तारीख /Date of Pronouncement

: 09.03.2017

आदेश / O R D E R

PER D.S.SUNDER SINGH, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the Order dated 17.03.2016 of Commissioner of Income Tax (Appeals)-11, Chennai, in ITA No.646/2013-14/CIT(A)-11 for the AY 2005-06 and raised the following grounds:

1. *The order dated 17.03.2016 of the Learned CIT(A)-11, Chennai in ITA No.ITA No.646/2013-14/CIT(A)-11 for the Assessment Year is contrary to facts, opposed to law and untenable.*
2. *The Learned Commissioner of Income Tax (Appeals) erred in rejecting the ground related to Jurisdiction on re-opening u/s.147 of the Income Tax Act.*
 - 2.1 *The Ld CIT(A) failed to appreciate that the Appellant was subjected to Section notice u/s.148 of the Act.*
 - 2.2 *The Ld CIT(A) ought to have considered the case laws relied by the Appellant in the proceedings.*
 - 2.3 *The Ld CIT(A) further erred in not discussing the case laws relied by the Appellant.*
 - 2.4 *The Ld CIT(A) grossly erred in relying case laws which are distinguishable on facts of the Appellant.*
 - 2.5 *The Ld CIT(A) grossly erred in not appreciating that the Appellant was subjected to regular assessment and Re-assessment and further Reassessment.*

For these and other grounds that may be permitted to be adduced before or during the course of hearing, the Appellant prays that the appeal be allowed and the order of Learned Commissioner of Income Tax (Appeals) in so far as rejecting the appeal on the issue of Re-opening u/s.147 be deleted.

2.0 All the grounds of the appeal are related to the issue of notice u/s.147 of Income Tax Act. The assessee filed return of income on 31.03.2006 declaring total income of Rs.361.33 lakhs and the assessment was completed u/s.143(3) by an order dated 27.12.2007. Later on, the assessment was re-opened u/s.147 to determine the total income u/s.115JB of Income tax act and completed the reassessment u/s.143(3) r.w.s.147 and determined the total income u/s.115JB at Rs.3,48,77,000/-. Again the AO has issued notice u/s.147 on 29.03.2012 and completed the assessment by an order u/s.143(3) r.w.s.147 on total income u/s.115JB at Rs.6,26,78,000/-. As per Explanation-1 (iii) of Sec.115JB unabsorbed depreciation or the amount of brought forward loss whichever is less is allowed to be adjusted. In the re-assessment (third round) made u/s.143(3) on 28.03.2013, the AO made the adjustment relating to

brought forward losses of earlier years and determined the total income u/s.115JB at Rs.6,26,78,000/-.

3.0 Aggrieved by the order of the AO, the assessee went on appeal before the Ld.CIT(A) and challenged the validity of re-opening of assessment. The Ld.CIT(A) confirmed the re-opening of assessment and allowed the assessee's appeal partly. Against the order of the Ld.CIT(A), the assessee is on appeal before us and argued that the assessment was re-opened beyond four years from the end of the relevant assessment years and the reasons recorded for re-opening of assessment was the computation of book profits u/s.115JB which was examined in the original Assessment Order dated 27.12.2007 as well as in the subsequent Assessment Order. In fact, in 2nd round, the assessment was re-opened by issue of notice u/s.147 for the purpose of examining the correctness of computation of book profits u/s.115JB of Income Tax Act and accordingly completed the assessment u/s.143(3) r.w.s.147 on 31.12.2010 after considering all the materials available with the A.O. Again re-opening of assessment on the same issue is nothing but difference of opinion and is not permissible in law since no fresh material is available with the A.O. On the other hand, Ld.DR relied on the lower authorities Orders.

4.0 We heard the rival submissions and perused the material placed on record.

The assessee has filed the return of income which was scrutinized u/s.143(3) and passed an order u/s.143(3) on 27.12.2007. Subsequently, for verification of computation of book profits u/s.115JB, the AO re-opened the assessment by issue of notice u/s.147 and completed the reassessment u/s.143(3) r.w.s.147 on 13.12.2010. In the third round, the AO re-opened the assessment by issue of notice u/s.147 on 29.03.2012 recording following reasons:

"In the case of the assessee M/s.Twenty First Century Management Services Limited, during the Asst. Year 2005-06, it is seen from the records that the assessee, while computing the book profit u/s.115JB, the adjustments on account of Explanation (I)(iii,) to that section i.e. the amount of loss brought forward or unabsorbed depreciation whichever is less as per books of account, has claimed excess relief resulting in under assessment of income".

5.0 In the instant case, the assessment was related to the AY 2005-06 and the assessment was re-opened beyond four years. For re-opening the assessment beyond four years, there should be failure on the part of the assessee as per Sec.147 of IT Act and we extract the relevant provisions of IT Act as under:

³⁰**[Income escaping assessment.**

³¹ **147.** If the ³²[Assessing] Officer ³³[has reason to believe³⁴] that any income chargeable to tax has escaped assessment³⁴ for any assessment year, he ³⁴may, subject to the provisions of [sections 148 to 153](#), assess or reassess³⁴ such³⁴ income ³⁴and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings³⁴ under this section, or recompute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in [sections 148 to 153](#) referred to as the relevant assessment year) :

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 year³⁵, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure³⁵ 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 facts³⁵ necessary for his assessment, for that assessment year:

³⁶[**Provided further** that nothing contained in the first proviso shall apply in a case where any income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment for any assessment year:]

³⁷[**Provided** ³⁸[**also**] that the Assessing Officer may assess or reassess such income, other than the income involving matters which are the subject matters of any appeal, reference or revision, which is chargeable to tax and has escaped assessment.]

Explanation 1.—Production³⁹ before the Assessing Officer of account books or other evidence from which material evidence could with due diligence have been discovered by the Assessing Officer will not necessarily³⁹ amount to disclosure within the meaning of the foregoing proviso.

Explanation 2.—For the purposes of this section, the following shall also be deemed to be cases where income chargeable to tax has escaped assessment, namely :—

- (a) where no return of income has been furnished by the assessee although his total income or the total income of any other person in respect of which he is assessable under this Act during the previous year exceeded the maximum amount which is not chargeable to income-tax ;
- (b) where a return of income has been furnished by the assessee but no assessment has been made and it is noticed by the Assessing Officer that the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return ;
- ⁴⁰[(ba) where the assessee has failed to furnish a report in respect of any international transaction which he was so required under [section 92E](#);
- (c) where an assessment has been made, but—
 - (i) income chargeable to tax has been underassessed ; or
 - (ii) such income has been assessed at too low a rate⁴¹ ; or
 - (iii) such income has been made the subject of excessive relief under this Act ; or
 - (iv) excessive loss or depreciation allowance or any other allowance under this Act has been computed;]
- ^{41a}[(ca) where a return of income has not been furnished by the assessee or a return of income has been furnished by him and on the basis of information or document received from the prescribed income-tax authority, under sub-section (2) of [section 133C](#), it is noticed by the Assessing Officer that the income of the assessee exceeds the maximum amount not chargeable to tax, or as the case may be, the assessee has understated the income or has claimed excessive loss, deduction, allowance or relief in the return;]
- ⁴²[(d) where a person is found to have any asset (including financial interest in any entity) located outside India.]

⁴³[Explanation 3.—For the purpose of assessment or reassessment⁴¹ under this section, the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of [section 148](#).]

⁴⁴[Explanation 4.—For the removal of doubts, it is hereby clarified that the provisions of this section, as amended by the Finance Act, 2012, shall also be applicable for any assessment year beginning on or before the 1st day of April, 2012.]

6.0 From the above, it is clear that the reasons recorded for re-opening of the assessment was already examined by the AO in the assessment made u/s.143(3) r.w.s.147 of Income Tax Act on 30.12.2010 and the Ld.AR submitted that no fresh material is available to the AO to re-open the assessment. The Revenue could not establish that the income has escaped assessment due to the failure on the part of the assessee. Therefore, we hold that the notice issued u/s.148 lacks jurisdiction and the same is quashed.

7.0 In the result, the appeal of the assessee is **allowed**.

Order pronounced in the Open Court on 9th March, 2017, at Chennai.

Sd/-
(एन.आर.एस. गणेशन)
(N.R.S. GANESAN)
न्यायिक सदस्य/**JUDICIAL MEMBER**

Sd/-
(डि.एस. सुन्दर सिंह)
(D.S.SUNDER SINGH)
लेखा सदस्य/**ACCOUNTANT MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 9th March, 2017.

TLN

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

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|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 4. आयकर आयुक्त/CIT |
| 2. प्रत्यर्थी/Respondent | 5. विभागीय प्रतिनिधि/DR |
| 3. आयकर आयुक्त (अपील)/CIT(A) | 6. गार्ड फाईल/GF |