

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI

BEFORE SHRI G.S.PANNU, ACCOUNTANT MEMBER
AND SHRI SANJAY GARG, JUDICIAL MEMBER

ITA No. 7047/MUM/2013
(Assessment Year : 2006-07)

Voltas Limited,
Voltas House –A,
Dr.Babasaheb Ambedkar Road,
Chinchpokli,Mumbai 400 033.
PAN:AAACV 2809D

... Appellant

Vs.

The ACIT, Range 7(3),
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

.... Respondent

ITA No. 7323/MUM/2013
(Assessment Year : 2006-07)

The DCIT, Range 7(3),
Aaykar Bhavan, M.K.Road,
Mumbai 400 020

.... Appellant

Vs.

Voltas Limited,
Voltas House –A,
Dr.Babasaheb Ambedkar Road,
Chinchpokli,Mumbai 400 033.
PAN:AAACV 2809D

.... Respondent

Assessee by : Shri Nitesh Joshi
Revenue by : Shri Jayant Kumar

Date of hearing : 06/06/2016
Date of pronouncement : 08/06/2016

ORDER**PER G.S. PANNU,AM:**

The captioned cross-appeals filed by the assessee and Revenue pertaining to A.Y. 2006-07 are directed against an order passed by Ld. CIT(A)-13, Mumbai dated 26/09/2013, which in turn arises out of an order passed by the Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (in short 'the Act') dated 17/04/2012.

2. The captioned cross appeals pertain to the assessment year 2006-07, and the respective Grounds of appeal raised by the assessee and the Revenue arise out of an order passed by the Assessing Officer by invoking the provisions of section 147/148 of the Act. In this case, the return of income for assessment year 2006-07 was filed by the assessee on 27/11/2006 declaring a total income of "Nil" under the normal provisions of the Act and Rs.77,12,71,507/- under section 115JB of the Act. This return was processed under section 143(1) of the Act on 29/03/2008. No further scrutiny assessment was made by the Assessing Officer under section 143(3) of the Act, however, subsequently, the Assessing Officer issued a notice under section 148 of the Act dated 25/03/2011, which was served on the assessee on 31/03/2011. In terms of the aforesaid notice, the Assessing Officer reopened the assessment, after recording the reasons required in terms of section 147 of the Act, and such reasons have been reproduced by the Assessing Officer in Para-2 of the order. Primarily, the reasons recorded by the Assessing Officer reflect that, based on the fact that there was no scrutiny assessment made under section 143(3) of the Act for the instant year and further that for the earlier assessment year of

2005-06 various additions/disallowances have been made, the Assessing Officer formed a belief about escapement of income. In the ensuing assessment finalized under section 143(3) r.w.s. 147 of the Act dated 17/04/2012, the Assessing Officer has computed the total income at Rs.35,41,32,128/- after making certain disallowances/additions. The assessment so framed was carried in appeal by the assessee before the CIT(Appeals) by raising points of law and facts. On the points of law, and, one of the pertinent point raised was that the initiation of proceedings by issuance of notice under section 147/148 of the Act was bad in law; and, secondly, that the reassessment order passed by the Assessing Officer on 17/04/2012 was beyond the period stipulated in law. Other grounds raised by the assessee related to the various additions made by the Assessing Officer on account of Provision for trade guarantees, payment to clubs, disallowance under section 14A of the Act and denial of set-off of unabsorbed depreciation, etc. The CIT(Appeals) has disagreed with the assessee on the issue of validity of the proceedings initiated by issuance of notice under section 147/148 of the Act, as well as on the issue of limitation for passing the assessment order. In so far as the various additions challenged, the CIT(Appeals) accepted the pleas of the assessee on the disallowances made by the Assessing Officer under section 14A of the Act and also on set-off of unabsorbed depreciation.

3. Presently, the Revenue has come in appeal challenging the order of the CIT(Appeals) allowing relief with respect to the disallowances made under section 14A of the Act and on set-off of unabsorbed depreciation. The assessee in its cross appeal, has assailed the decision

of the CIT(Appeals) on the aspect of the validity of the initiation of proceedings under section 147/148 of the Act as well as the limitation for passing of the impugned assessment order.

4. In this background, the preliminary plea of the assessee, which canvasses that the impugned assessment order has been passed after completion of the stipulated period prescribed in law, was heard at the outset, being an issue which goes to the root of the matter. Such grievance is articulated by the assessee by way of Ground of appeal No.2 in the concise Grounds of appeal, which read as under:-

“GROUND NO.2: RE-ASSESSMENT ORDER PASSED AFTER COMPLETION OF STIPULATED PERIOD.

Whether the Assessment Order dated April 17,2012 passed by the Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 is barred by limitation, hence illegal and bad in law.”

5. In order to appreciate the aforesaid grievance of the assessee, the following fact-situation is relevant. In this case, the Assessing Officer issued a notice under section 148 of the Act dated 25/03/2011 after recording reasons of even date, copies of which have been placed in the Paper Book at pages 21-22. The aforesaid fact-situation has also been noted by the Assessing Officer in Para-2 of the assessment order. The aforesaid notice was served on the assessee on 31/03/2011. On the basis of the aforesaid facts, the case set-up by the assessee is that the ensuing assessment order was required to be passed within a period of nine months from 31/03/2011 i.e. upto 31/12/2011. The aforesaid position is canvassed on the basis of section 153(2) of Act r.w 2nd proviso thereof, which read as under:-

“(2) No order of assessment, reassessment or recomputation shall be made under section 147 after the expiry of [one year] from the

end of the financial year in which the notice under section 148 was served;

.....

[Provided further that where the notice under section 148 was served on or after the 1st day of April, 2005[but before the 1st day of April, 2011], the provisions of this sub-section shall have effect as if for the words "one year", the words "nine months" had been substituted:]"

6. On the aforesaid aspect, there is no dispute though in Para 4 - 4.1 of the impugned order, the CIT(Appeals) has observed that the ensuing assessment order could be passed upto 31/3/2012. Ostensibly, the aforesaid inference of the CIT(Appeals) is misplaced and is merely based on the contents of sub-section (2) of section 153 of the Act without noticing the 2nd proviso (reproduced above), which is applicable in the instant case. Even before us, the Ld. CIT-DR, appearing for the Revenue has not controverted the aforesaid legal position, which is clearly emerging from the provisions of the statute. Thus, we proceed further on the premise that the time-limit to pass the assessment order was 31/12/2011 and not 31/03/2012, noted by the CIT(Appeals).

7. At this juncture, it is also to be noted that on 8/12/2011, assessee filed a writ petition before the Hon'ble Bombay High Court against the interim order passed by the Assessing Officer on 15/11/2011 disposing the objections raised by the assessee against the issue of notice u/s.148 of the Act. The Hon'ble Bombay High Court passed an order in Writ Petition (L)/2675/ of 2011 dated 13/12/2011 granting ad-interim stay. Subsequently, the assessee company withdrew the said Writ Petition and an order to that effect was passed by the Hon'ble High Court on 12/02/2012. Copies of such orders passed by the Hon'ble Bombay High

Court have been placed on record. The Assessing Officer has passed reassessment order u/s. 143(3) r.w.s. 147 of the Act on 17/04/2012.

8. In computing the period of limitation prescribed in section 153(2) of the Act r.w 2nd proviso thereof, clause(ii) of Explanation-1 below section 153(4) of the Act prescribes that the period during which the assessment proceedings is stayed by an order or an ad-interim indenture of any court shall be excluded. The aforesaid period in the instant case pertains to the period between 13/12/2011 and 15/02/2012. Further, the first proviso to section 153(4) of the Act, which reads as under:-

“[Provided that where immediately after the exclusion of the aforesaid time or period, the period of limitation referred to in sub-sections (1), (1A), (1B), (2), (2A) and (4) available to the Assessing Officer for making an order of assessment, reassessment or recomputation, as the case may be, is less than sixty days, such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly:”

prescribes that if the period available to the Assessing Officer after exclusion of the period of stay is less than 60 days, such remaining period shall be extended to 60 days and the stipulated period of limitation should be deemed to be extended accordingly.

9. In this background, the case set up by the assessee is that the Assessing Officer ought to have passed the reassessment order within 60 days from 15/02/2012, i.e. upto 14/04/2012, since the time available with the Assessing Officer before filing of the Writ Petition was less than 60 days. Factually speaking, the aforesaid period of limitation, i.e. 14/4/2012 has not been adhered to by the Assessing Officer as the assessment order is dated 17/04/2012.

10. The aforesaid factual matrix was not disputed by the Ld. Departmental Representative though it was sought to be canvassed that in the present case there are peculiar circumstances, whereby the matter was carried by the assessee by way of Writ Petition to the Hon'ble High Court and the Assessing Officer has even considered the submissions furnished by the assessee vide communication dated 16/04/2012. In our considered opinion, in view of the clear provisions of law, the reassessment order dated 17/04/2012 is beyond the period stipulated in law and, therefore, the same is liable to be considered as invalid and lacking in jurisdiction. We hold so. Consequently, the assessment order passed by the Assessing Officer is set-aside being bad in law.

11. Since the assessment order itself has been held to be bad in law, the other Grounds raised by the assessee on the validity of initiation of proceedings u/s. 147/148 as well as the Grounds raised by the Revenue in its cross appeal on certain additions made by the Assessing Officer are rendered academic and become infructuous.

12. Resultantly, whereas the appeal of the assessee is allowed as above, that of the Revenue is dismissed.

Order pronounced in the open court on 08/06/2016

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER
Mumbai, Dated 08/06/2016

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Vm, Sr. PS

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai