
(2007) 06 MAD CK 0150

In the Madras High Court

Case No : T.C. (A.) No's. 603 and 604 of 2007

Commissioner of Income Tax

APPELLANT

Vs

Premier Mills Ltd.

RESPONDENT

Date of Decision : 18-06-2007

Acts Referred:

Income Tax Act, 1961 — Section 139, 142(1), 143(3), 147, 148

Citation : (2008) 296 ITR 157 : (2009) 179 TAXMAN 13

Hon'ble Judges : P.P.S. Janarthana Raja, J;P.D. Dinakaran, J

Bench : Division Bench

Advocate : N. Muralikumaran, for the Appellant;

Judgement

P.D. Dinakaran, J.—The above tax case appeals are directed against the common order of the Income Tax Appellate Tribunal dated April 28, 2006, made in I.T.A. Nos. 1892 and 1893/Mds/2000 for the assessment years 1991-92 and 1992-93 respectively.

2. The Revenue is the appellant. The Assessing Officer completed assessment u/s 143(3) of the Act and reopened the same with prior permission of the Commissioner of Income Tax and issued notice u/s 148 of the Act and passed orders. Aggrieved, the assessee went on appeal to the Commissioner of Income Tax (Appeals), who dismissed the appeals. On further appeals, the Tribunal holding that the notice u/s 148 of the Act was issued after the expiry of four years from the end of the relevant assessment year and the same would amount to change of opinion, allowed the appeals. Hence, the above appeals raising the following substantial question of law:

Whether the Assessing Officer is empowered to reopen an assessment based on a subsequent Supreme Court decision?

3. It is fairly conceded by the learned standing counsel appearing for the appellant that the above issue is covered by the decision of this Court in Commissioner of Income Tax Vs. Elgi Ultra Industries Ltd., .

4. In CIT v. Elgi Ultra Industries Ltd. T.C. No. 441 of 2007 dated June 6, 2007 Commissioner of Income Tax Vs. Elgi Ultra Industries Ltd., , this Court following the decision of Commissioner of Income Tax Vs. Elgi Finance Ltd., held as under:

In this case, notice was issued u/s 148 of the Act and served on the assessee on August 3, 2004, i.e., after four years from the end of the assessment year 1999-2000. The assessment was made u/s 143(3) of the Act. Both the Tribunal as well as the first appellate authority have followed the Supreme Court judgment reported in the case of Commissioner of Income Tax and Another Vs. Foramer France (through constituted attorneys), and held that there is no failure on the part of the assessee to disclose material facts and hence reassessment proceedings after the expiry of four years is not possible in view of the provisions of Section 147 of the Act. Admittedly, the reassessment proceedings are initiated after a period of four years. The scope of the said proviso to Section 147 of the Act has been considered by this Court in the case of Commissioner of Income Tax Vs. Elgi Finance Ltd., , and the same reads as follows (page 678):

The law relating to the reassessment has undergone a change from April 1, 1989. The change was brought in by the Direct Tax Laws (Amendment) Act, 1987. Two sets of provisions were available u/s 147 in Clause (a) and Clause (b). This distinction has now been taken away by the Amendment Act. Previously, the line of distinction was a limitation period of four years and the limitation period exceeding four years. The Assessing Officer would reopen a back assessment within a period of four years as long as he had reason to believe in consequence of any information, that income has been under assessed or income has escaped assessment. In the case of limitation, providing for a period exceeding four years, there should have been a failure on the part of the assessee to disclose fully and truly all material facts leading to the escapement of income. But as a result of the amendment brought with effect from April 1, 1989, the above distinction had been obliterated and the Assessing Officer could reassess the income as long as he had reason to believe that income chargeable had escaped assessment. The new law has inserted a proviso to Section 147 in the following words:

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 u/s 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.

In addition to the time-limits provided for u/s 149, the law has provided another limitation of four years under the proviso to Section 147. As far as the above proviso to Section 147 is concerned, the law prescribes a period of four years to initiate reassessment proceedings, unless the income alleged to have escaped

assessment was made out as a result of failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment.

In the present case, the Tribunal had considered the above proviso to Section 147 of the Act and held as follows:

Even now, before us, the Revenue could not contend that the reassessment is framed on submission of new material or information. Admittedly, the reassessment proceedings are initiated after four years as provided under the proviso to Section 147 of the Act. There is no charge that income chargeable to tax has escaped from assessment by reason of the failure on the part of the assessee to disclose fully and truly material facts necessary for assessment. The hon''ble apex court in the case of Commissioner of Income Tax and Another Vs. Foramer France (through constituted attorneys), 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 Section 147 of the Act. Respectfully, following the judgment of the hon''ble apex court, we uphold the order of the Commissioner of Income Tax (Appeals) and accordingly the Revenue's appeal is dismissed.

8. In the result, both the appeals filed by the Revenue stand dismissed.

5. In case where the assessment is completed u/s 143(3) of the Income Tax Act, the reopening of the assessment u/s 148 beyond the period of four years at the end of the relevant assessment year can be sustained only if it is established that there is a failure on the part of the assessee to disclose fully and truly all material facts. In this case there is no finding that there is failure on the part of the assessee to disclose fully and truly all material facts. Further, all the material facts are available at the time of making original assessment. The Tribunal has correctly followed the principles enunciated in the Supreme Court judgment reported in Commissioner of Income Tax and Another Vs. Foramer France (through constituted attorneys), , as well as this Court judgment reported in the case of Commissioner of Income Tax Vs. Elgi Finance Ltd., and came to the correct conclusion.

6. Under these circumstances, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant any interference. In view of the same, no substantial questions of law arise for consideration of this Court and accordingly the tax case is dismissed.

7. In view of the above settled proposition in the decision cited supra, finding no substantial question of law that arises for our consideration, these appeals are dismissed. No costs.

8. Consequently, M.P. No. 1 of 2007 is also dismissed.