

(2018) 04 RAJ CK 0025

In the Rajasthan High Court

Case No : Income Tax Appeal No. 77 of 2018

**Pr. Commissioner Of Income Tax, Alwar @APPELLANT@Hash M/s.
Supreme Cylinders Pvt. Ltd.**

Date of Decision : 23-04-2018

Acts Referred:

Citation : (2018) 04 RAJ CK 0025

Hon'ble Judges : K.S.JHAVERI , J;VIJAY KUMAR VYAS, J

Bench : Division Bench

Advocate : Parinitoo Jain, Shiva Goyal

Final Decision : Disposed Off

Judgement

By way of this appeal, the appellant has challenged the judgment and order of the Tribunal whereby the Tribunal has dismissed the appeal of the department.

Counsel for the appellant has framed following questions of law:

â??(i) Whether the findings of the Tribunal are perverse in upholding the findings of the CIT(A) of deleting the addition of Rs. 1,12,58,527/- on

account of suppressed scrap sales which was made on the basis of material found during the course of survey u/s 133A and no evidence was given

by the assessee to prove the market rate of that period.

(ii) Whether the findings of the Tribunal are perverse in upholding the findings of the CIT(A) of deleting the addition of Rs. 1,67,07,740/- made on

account inflated purchases specifically when such purchases were not entered in the material inward register and goods receipt register?â??

The Tribunal has relied upon earlier decision which has been confirmed by us in case of CIT Alwar vs. M/s Supreme Cylinders Ltd. (DBITA No.

473/2011) decided on 25th April, 2017, wherein it has been observed as under:-

3. However, in subsequent year for the same assessee, this Court in the case of The Commissioner of Income Tax, Alwar vs. M/s Supreme

Cylinders Ltd. A-146, Industrial Area, Bhiwadi in Tax Appeal No. 67/2012 decided on 14th September, 2016, has held as under:-

4. Counsel for the appellant has taken us through the provisions of Section 147 & 148 which read as under:-

147. Income escaping assessment-if-

(a) the Assessing Officer has reason to believe that , by reason of the omission or failure on the part of an assessee to make a return under Section

139 for any assessment year to the Assessing Officer or to disclose fully and truly all material facts necessary for his assessment for that year,

income chargeable to tax had escaped assessment for that year, or 148. Issue a notice, where income has escaped assessment-.

(1) Before making the assessment, reassessment or recomputation under Section 147, the Income Tax Officer shall serve on the assessee a notice

containing all or any of the requirements which may be included in a notice under Sub-section (2) of Section 139; and the provisions of this Act shall,

so far as may be, apply accordingly as if the notice were a notice issued under that Sub-section.

5. She has relied upon the decision of the Hon'ble Supreme Court in the case of M/s. Phool Chand Bajrang Lal and Anr. Vs. Income Tax Officer and

Anr. reported in (1993) 203 ITR 456 (SC) and contended that the view taken by the tribunal is required to be reversed and on another judgment of

Hon'ble Supreme Court in the case of Assistant Commissioner of Income-Tax vs. Rajesh Jhaveri Stock Brokers P. Ltd. reported in (2007) 291 ITR

500 (SC).

6. Counsel for the respondent contended that the Tribunal while considering the case of the assessee in paragraphs no. 31, 32 & 33 observed as

under:-

31. Now the Id. Counsel of the assessee here before the Tribunal stated that reopening of the assessment is bad in law as the same is reopened

after expiry of four years. It was also submitted that there was no failure on the part of the assessee for concealing any particulars or submitting the

details. Therefore, after four years reopening of assessment was not valid as earlier assessment was completed under Section 143(3). Attention of the

Bench was drawn on copy of assessment order placed in the paper book at pages 157 to 160. It was also submitted that the assessment was

completed on 28-3-2003 whereas reasons have been recorded on 28-3-2008 which is undisputedly after four years of completion of assessment.

32. On the other hand, the Id. D/R stated that this issue may be disposed off on merit. Reliance was placed on the order of id. CIT(A).

33. After considering the submissions and perusing the material on record, we find that assessee deserves to succeed on the legal issue raised through

cross objection. The copy of reasons recorded on 28-3-2008 is placed at pages 165 to 167 of the paper book and it is seen that the AO has observed

in last para of reasons recorded that he has arisen to believe that assessee company concealed its income which has escaped assessment by

furnishing incomplete and inaccurate particulars within the meaning of section 147. No where it has been mentioned in the reasons recorded that any

income has escaped on account of failure of the assessee to disclose truly and fully all material facts. The assessment in this case was completed

under Section 143(3) on 28-3-2003. The reasons have been recorded after expiry of four years which is not permissible as per provisions of law and

on account of various judgments pronounced by the Hon'ble Apex Court as well as various High Courts. Various High Courts have decided this issue

that reopening of the assessment after expiry of four years is bad in law where no income has escaped assessment on account of failure of the

assessee to disclose truly and fully all material facts. Various decisions decided by Hon'ble High Courts are reported in case of Indian Farmers

Fertilizers Co-op. Ltd., 171 Taxman 379 (Del.), in case of Tanna Builders Pvt. Ltd. 283 ITR 448(Bom.), in case of K.C.P. Ltd. 146 ITR 284(AP), in

case of Vareli Weavers Pvt. Ltd., 240 ITR 77 (Guj.) etc. therefore, without going into detail further, we hold that reopening of assessment was bad in

law as the same was reopened after expiry of four years as the original assessment was completed under section 143(3) of the Act, that too without

bringing any material on record that any income has escaped assessment on account of failure of the assessee to disclose truly and fully all material

facts. Accordingly we quash the assessment by holding that the same was bad in law.â??

7. We have heard the counsel for the appellant as well as counsel for the respondent.

8. Learned counsel for the appellant contended that in view of the Explanation (3) of Section 147, the order passed by the Assessing Officer and CIT

(A) deserves to be set aside according to the reasons which were reproduced by the Assessing Officer on page no.27, which reads as under:-

â??In this case survey u/s 133A of the IT Act was carried out at the business premises at Bhiwandi and Head Office at Delhi on 22-11-2004 by the

Investigation Wing,Jaipur. During the course of survey proceedings certain loose papers, bills of purchases of goods were impounded. The bill of of

purchases from the certain parties does not contain builtly of transportation/unloading. Apart from the following parties assessee made purchase which

are supported with builties of transportation and weighment slip. Besides this lower quality HR sheet were purchased from other parties which were

also entered goods receipt register and RG-23A part-1. These raw material either directly sent to job work got done through third party supported

transportation/weighment slops. On certain occasion the raw material for job work transported its place from the place of works of the company

which also bears these documents. The purchase from the certain parties not find place BIS register and no chemical analysis were carried by the

BIS official. The BIS officers release the HR shee/LPG under their code for manufacturing LPG cylinders after carried analytical analysis of HR

sheet/LPG and mark the colour date of release. The produce of the company i.e. LPG cylinders are subject to Excise therefore the release of raw

material and production under strict supervision of both the authorities. The purchase of LPG/sheet also not entered in the RG-23A Part 1 maintained

for excise department.â??

9. We have heard and considered the material on record. Taking into consideration the material which has come on record pursuant to the survey

which is carried out in February, 2004 whereas assessment was made much prior to the survey conducted in 2004. In the language of Section 147 &

148, it is very clear that the material which is sought to be relied upon was not available at time, on 23.3.2003 and the observations made by the

tribunal are just and proper and in consonance with the provisions of law. Provisions under Explanation (3) gives wide power but not in the present

case.

10. At this stage it would be relevant to quote provisions of Section 149 of the

Act which reads as under:

Time Limit for notice.

149. [(1) No notice under Section 148 shall be issued for the relevant assessment year,

[(a) if four years have elapsed from the end of the relevant assessment year, unless the case falls under clause (b) [or clause (c)];

(b) if four years, but not more than six years, have elapsed from the end of the relevant assessment year unless the income chargeable to tax which

has escaped assessment amounts to or is likely to amount to one lakh rupees or more for that year;]

[(c) if four years, but not more than sixteen years, have elapsed from the end of the relevant assessment year unless the income in relation to any

asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment.]

11. Since there is no reasoning on the record by the Assessing Officer that he has invoked clauses (b) & (c) and in the second appeal two points are

regarding closing stock and the other material which is sought to be relevant for survey is not permissible under the law.

Counsel for the appellant contended that the finding which has been arrived at by the Tribunal will not be considered. In our considered opinion, the

Tribunal has decided the appeal in view of our earlier decision, hence, no such direction can be issued.

It appears that the department has preferred SLP against the judgment, hence, subject to decision of SLP, the appeal stands disposed of.