

ITAT Pune

Members

Vikas Awasthy
D. Karunakara Rao

Lawyers (Revenue)

N. Ashok Babu

Timeline

ITAT PUNE



19 Apr 2017

Case filed

10 Jul 2019

Hearing

12 Jul 2019

[Judgement](#)

DEPUTY COMMISSIONER OF INCOME TAX vs SOVEREIGN PHARMA PVT LTD



12.07.2019 Income Tax 980-PUN-2017

Text Highlight
 Issues & Grounds of
appeal

Arguments

 Holding &
Outcome

Sovereign Pharma Pvt. Ltd.,

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-4, Pune dated 12-12-2016 for the assessment year 2007-08.

2. The brief facts of the case as emanating from records are:
The assessee filed its return of income for the assessment year 2007-08 on

27-10-2007 declaring loss of Rs.1,56,94,258/-. Scrutiny assessment u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was completed in the case of assessee on 18-12-2009 accepting the loss returned by the assessee. Thereafter, the assessment was reopened by the Assessing Officer and notice u/s. 148 of the Act was issued on 07-02-2014. In reassessment proceedings, the Assessing Officer made addition on account of difference in receipts of sundry debtors Rs.1,11,63,551/-.

Aggrieved against the assessment order dated 31-12-2014 passed u/s. 143(3) r.w.s. 147 of the Act, the assessee filed appeal before the Commissioner of Income Tax (Appeals), assailing reopening of assessment as well as, the addition made on merits. The Commissioner of Income Tax (Appeals) after analyzing the facts and documents on record accepted assessee's contentions challenging the validity of reopening. The Commissioner of Income Tax (Appeals) held reopening of assessment was based on mere change of opinion. Against the findings of First Appellate Authority, the Revenue is in appeal.

3. Shri R.S. Abhyankar appearing on behalf of the assessee submitted at the outset that reopening of assessment was made beyond the period of four years, thus, the proviso to section 147 gets attracted. The Assessing Officer in reasons recorded for reopening has nowhere mentioned that income chargeable to tax has escaped assessment by reason of failure on the part of assessee to disclose fully and truly all material facts necessary for assessment. A perusal of reasons recorded for reopening would show that the reassessment proceedings u/s. 148 have been initiated merely to cover up alleged deficiencies in the

Law Referred

Income Tax Act, 1961

Section 143(3), Section 147, Section 148

Further submitted that the assessee during scrutiny assessment proceedings had furnished complete details of sundry debtors and party wise details of sale. The reassessment proceedings have been initiated after reappraisal of material already available with the Assessing Officer. The Id. AR vehemently defended the impugned order and prayed for dismissing the appeal of Revenue.

4. On the other hand Shri N. Ashok Babu representing the Department vehemently defended the action of Assessing Officer in reopening the assessment. The Id. DR submitted that during assessment proceedings the Assessing Officer in the absence of documentary evidence could not consider the issue of sundry debtors. There was difference in receipts of sundry debtors. The Id. DR prayed for reversing the findings of Commissioner of Income Tax (Appeals) on the issue of reopening of assessment.

5. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. It is an undisputed fact that the Assessing Officer has reopened assessment beyond the period of four years from the end of relevant assessment year. The Assessing Officer has power to reopen the assessment after the expiry of four years from the end of relevant assessment year if, the income has escaped assessment by reason of failure on the part of assessee to disclose fully and truly all material facts necessary for the assessment for that assessment year. In the instant case, we observe that reassessment proceedings have been initiated by the Assessing Officer on reappraisal of facts and documents already on record. The reasons recorded by Assessing Officer for reopening the assessment reads as under:

“The Scrutiny assessment u/s. 143(3) of the I.T. Act, 1961 of the above mentioned assessee was completed on 31.12.2008 by the ITO, Wd.6(4) with the assessed income of Rs.(-)3,49,61,949/-. On perusal of the case records, it is observed that the following amount should have been disallowed in term of various provision of Income tax Act, 1961.

An amount of Rs.1,11,63,551/- on account of difference in receipts of Sundry debtors is inadvertently remained to be added to the total income of the assessee.

In view of the above, I have reasons to believe that there is an escapement of income u/s. 147 of the I.T. Act, 1961.”

6. A bare perusal of reasons for reopening would show that the Assessing Officer has erred in invoking the provisions of section 148 r.w.s.

147 after the expiry of four years to cover up his own follies. It is not the case of Revenue that the assessee has not fully and truly disclosed all material facts necessary for its assessment. The proviso to section 147 mandates that the assessment can be reopened inter alia, where the assessee has failed to disclose

Act are not meant to rectify the defects in the assessment order caused by the Assessing Officer's own negligence. The provisions of section 147 are more stringent where Assessing Officer intends to reopen the assessment after the expiry of four years from the end of the relevant assessment year. The Assessing Officer cannot be allowed to recklessly invoke the provisions of section 148/147 to make additions on mere reappraisal of the facts and documents already on record.

7. In the instant case, we find that the Assessing Officer has resorted to provisions of section 148/147 merely on change of opinion after reappraisal of facts that were available before him in proceedings u/s. 143(3) of the Act. We find no reason to interfere with the well reasoned findings of First Appellate Authority. Accordingly, the impugned order is upheld and the appeal of Revenue is dismissed sans merits.

8. In the result, the appeal of Revenue is dismissed.

Order pronounced on Friday, the 12th day of July, 2019.

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