

## No reassessment after expiry of limitation period merely on basis of opinion expressed by higher forum

**Summary – The Chennai ITAT in a recent case of Emgeeyar Pictures (P.) Ltd., (the Assessee) held that In respect of any assessment year wherein further proceedings are barred by limitation, assessment cannot be reopened merely by virtue of an opinion expressed by any higher forum at a later date, i.e., subsequent to date of limitation period**

### Facts

- The assessee entered into an agreement for joint development of property on 25-12-2000. The assessee handed over the possession of the property to the builder on the same date. The assessee offered to tax the capital gains thereon in the assessment years 2003-04 and 2004-05, but at a later stage, it was contended that no transfer took place in the respective assessment years and hence, it was not assessable to tax on capital gains in assessment years 2003-04 and 2004-05.
- The Tribunal, while disposing of the appeals for assessment years 2003-04 and 2004-05, observed that the capital gains, arising out of transfer of the property, could not be taxed in assessment years 2003-04 and 2004-05.
- Based on the observation made by the Tribunal, the Assessing Officer sought to invoke the provisions of section 148, read with section 150, for the assessment year 2001-02 and, accordingly, issued a notice on 10-6-2011.
- The case of the assessee was that the proceedings for the assessment year 2001-02 were barred by limitation and, hence, notice issued under section 148 read with section 150 was beyond the period of limitation.
- The Assessing Officer as well as the Commissioner (Appeals) rejected assessee's contention and made assessment wherein the amount receivable on transfer of asset was brought to tax.
- In appellate proceedings assessee raised a plea that there was no finding or direction by the Tribunal while disposing of the appeals for assessment years 2003-04 and 2004-05 with regard to taxability of the capital gains in assessment year 2001-02 and hence, on the basis of mere observation, the proceedings for the assessment year 2001-02 could not be reopened; the Assessing Officer could not take the benefit of section 150 for reopening the completed assessment after expiry of limitation provided under section 149.
- It was also contended that even if the observation of the Tribunal was considered as a finding or direction, the Assessing Officer was entitled to reopen the assessment only when it was not barred by limitation i.e. period of maximum six years, reckoned from the end of the assessment year. In this case limitation period expired on 31-3-2008 and so the Assessing Officer was not entitled to reopen the assessment since the Tribunal while disposing of the appeals in assessment years 2003-04 and 2004-05 had made the relevant observation only in the year 2010.
- The Judicial Member opined that while disposing of the appeals for assessment years 2003-04 and 2004-05, the limited contention of the assessee was that the capital gains arising out of the transfer of asset could not be taxed in assessment years 2003-04 and 2004-05, which was ultimately

accepted on the ground that the joint development agreement was entered into on 25-12-2000 and the possession of the property was also handed over on the same date. This could not be equated to a finding or direction. He also analysed the provisions of section 150(1) and 150(2) to highlight that the provisions of section 150(1) were not applicable in respect of assessment year in which the assessment, re-assessment or re-computation could not have been made if the proceedings were already barred by limitation by the date the Tribunal passed the order and the Assessing Officer initiated proceedings. He further observed that section 149 provides for maximum period of six years from the end of the relevant assessment year in case the income chargeable to tax exceeds Rs. 1 lakh. By applying this formula, the limitation expired on 31-3-2008, whereas the Tribunal passed the order on 31-5-2010 in which event the Assessing Officer could not make any addition on the basis of a later order of the Tribunal by invoking the provisions of section 150(1).

- The Accountant Member, on the other hand, took a view that the assessee had not offered any income related to capital gains in the assessment year 2001-02 and only during appellate proceedings it was submitted that by virtue of the joint development agreement, the transfer took place in December 2000. It was thus observed that only based upon a finding by the Tribunal, while adjudicating the assessee's appeals for assessment years 2003-04 and 2004-05, the issue had come to light that the amount was taxable in assessment year 2001-02 and thus, the Assessing Officer was justified in reopening the assessment by issuing notice under section 148, read with section 150 since it amounted to a direction or finding by the Tribunal.
- In view of difference of opinion between the Members of the Tribunal, the matter was referred to the Third Member.

#### Held

- As could be noticed from the observations made by the Tribunal, while disposing of the appeals for assessment years 2003-04 and 2004-05, a casual observation was made to deal with the issue before them as to whether the capital gains is attracted in assessment years 2003-04 and 2004-05; but there is no specific finding or direction that it is assessable to tax in assessment year 2001-02. Even if it is assumed that there is a finding or direction, the Madras High Court, in the case of *Goldmine Investments Tax Case (Appeal) No. 215 of 2008*, dated 29-11-2013, has considered an identical issue wherein it was held that in respect of any assessment year wherein further proceedings are barred by limitation, assessment cannot be reopened merely by virtue of an opinion expressed by any higher forum at a later date, i.e., subsequent to the date of limitation period.
- Having regard to the circumstances of the case, it is held that the reopening of assessment is bad in law since the proceedings under section 148 are sought to be initiated by issuing a notice after the period of limitation. In the light of the above findings, it is concluded that:
  - (1) The notice issued under section 148 read with section 150(1), cannot be said to be based on any finding or direction issued by the Tribunal.
  - (2) Even otherwise the notice issued under section 148 is barred by limitation.