

No reassessment after 4 year merely on ground of non-deduction of TDS if all material facts were disclosed

Summary – The Kolkata ITAT in a recent case of Dipak Kumar Dasbhowmik, (the Assessee) held that where AO reopened assessment after expiry of four years from end of relevant assessment year on ground that it had failed to deduct tax at source from payment of channel rent, since there was no failure on part of assessee to disclose all material facts necessary for assessment, in view of proviso to section 147, impugned reassessment proceedings deserved to be quashed

Facts

- The assessee was engaged in the business of dealing in cement and paints. The Assessing Officer completed assessment under section 143(3).
- After expiry of four years from end of relevant year, the Assessing Officer reopened assessment and made disallowance under section 40(a)(ia) in respect of failure of assessee to deduct tax at source from payment of channel rent.
- The Commissioner (Appeals) confirmed the said disallowance.
- The assessee filed instant appeal challenging the validity of reassessment proceedings apart from raising objection to impugned disallowance on merits.

Held

- The assessment for the year under consideration was originally completed by the Assessing Officer under section 143(3) and the same was reopened after expiry of four years from the assessment year under consideration. The validity of the said reopening is challenged by the assessee by relying on the proviso to section 147.
- A perusal of said proviso clearly shows that the assessment originally completed under section 143(3) can be reopened by the Assessing Officer after the expiry of four years from the end of the relevant assessment year only where the income chargeable to tax has escaped assessment as a result of the failure of the assessee to file his return of income or furnish fully and truly all material facts, which are necessary for the purpose of assessment for that assessment year. As contended by the assessee, there was, however, no such failure on his part that was pointed out by the Assessing Officer in the reasons recorded.
- It is manifest from the reasons recorded by the Assessing Officer that no such failure on the part of the assessee as contemplated in the first proviso to section 147 was pointed out by the Assessing Officer in order to empower him to reopen the assessment originally completed under section 143(3) after the expiry of four years from the end of the assessment year under consideration. Even the revenue has not been able to show any such failure specifically pointed out by the Assessing

Officer in the reasons recorded and has simply relied on the impugned order of the Commissioner (Appeals) in support of its case on this issue.

- In view of above, it is held that the reopening of assessment originally completed under section 143(3) by the Assessing Officer after the expiry of four years from the end of the assessment year in question without satisfying the conditions laid down in the first proviso to section 147 was barred by limitation and the assessment made under section 143(3)/147 in pursuance thereof is invalid, which is liable to be cancelled.
- Keeping in view of the decision rendered on a preliminary issue cancelling the assessment made by the Assessing Officer under section 143(3)/147, the issue raised in assessee's appeal relating to the disallowance made under section 40(a)(ia) has become infructuous.
- In the result, the appeal of the assessee is allowed.