The Union of India, vs M/S. Digital Mesh Softech India (P) Ltd.,

The Union of India, vs M/S. Digital Mesh Softech India (P) Ltd.,

SooperKanoon Citation : sooperkanoon.com/1286699

Court : Kerala

Decided On : Mar-13-2024

Judge : Honourable Mr. Justice a.Muhamed Mustaque,Honourable Mrs. Justice Shoba Annamma Eapen

Appeal No. : WA/252/2024

Appellant : The Union of India,

Respondent : M/S. Digital Mesh Softech India (P) Ltd.,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN WEDNESDAY, THE 13TH DAY OF MARCH 2024 / 23RD PHALGUNA, 1945 WA NO. 286 OF 2024 AGAINST THE ORDER DATED IN WP(C) NO.4709 OF 2015 OF HIGH COURT OF KERALA APPELLANT/S:

1 UNION OF INDIA REPRESENTED BY THE SECRETARY MINISTRY OF FINANCE (DEPARTMENT OF REVENUE) NORTH BLOCK, NEW DELHI, PIN - 110001 2 THE INCOME TAX OFFICER WARD 1(1), 4TH

FLOOR, C.R. BUILDINGS, I.S. PPRESS ROAD, KOCHI REPRESENTED BY THE DEPUTY COMMISSIONER OF INCOME TAX, (BEING THE CURRENT JURISDICTIONAL OFFICER) CORPORATE CIRCLE-1(1), C.R. BUILDINGS, I.S. PRESS ROAD, KOCHI -682018, PIN - 682018 3 THE ADDITIONAL COMMISSIONER OF INCOME TAX CORPORATE RANGE C.R. BUILDINGS, I.S. PRESS ROAD, KOCHI REPRESENTED BY JOINT COMMISSIONER OF INCOME TAX, (BEING THE CURRENT JURISDICTIONAL AUTHORITY) CORPORATE RANGE-1, C.R. BUILDINGS, I.S. PRESS ROAD, KOCHI-682018, PIN - BY ADVS. JOSE JOSEPH CYRIAC TOM

-:2:- RESPONDENT/S: M/S. DIGITAL MESH SOFTECH INDIA(P) LTD 52, SHENOY ROAD, KALOOR, KOCHI REPRESENTED BY ITS DIRECTOR & CEO MR. RAVI JOHN, KARUTHEDATH, PIN - BY ADVS. Gopikrishnan Nambiar M K.JOHN MATHAI(K/413/1984) JOSON MANAVALAN(J-526) KURYAN THOMAS(K/131/2003) PAULOSE C. ABRAHAM(MAH/58/2006) RAJA KANNAN(K/356/2008) THIS WRIT APPEAL HAVING COME BEEN FINALLY HEARD ON 13.03.2024, ALONG WITH WA.252/2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:3:-

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE & THE HONOURABLE MRS. JUSTICE SHOBA ANNAMMA EAPEN WEDNESDAY, THE 13TH DAY OF MARCH 2024 / 23RD PHALGUNA, 1945 WA NO. 252 OF 2024 AGAINST THE JUDGMENT DATED IN WP(C) NO.4689 OF 2015 OF HIGH COURT OF KERALA APPELLANT/S:

1 THE UNION OF INDIA, REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE (DEPARTMENT OF REVENUE), NORTH BLOCK, NEW DELHI, PIN - 110001 2 THE INCOME TAX OFFICER, WARD 1(1), 4TH FLOOR, C.R.BUILDINGS, I.S.PRESS ROAD, KOCHI

REPRESENTED BY THE DEPUTY COMMISSIONER OF INCOME TAX, (BEING THE CURRENT JURISDICTIONAL OFFICER) CORPORATE CIRCLE-1(1), KOCHI, CENTRAL REVENUE BUILDINGS, I. S. PRESS ROAD,KOCHI, PIN - 3 THE ADDITIONAL COMMISSIONER OF INCOME TAX, COLPORATE RANGE, C.R. BUILDINGS, I.S. PRESS ROAD, KOCHI -682 018 REPRESENTED BY JOINT COMMISSIONER OF INCOME TAX, (BEING THE CURRENT JURISDICTIONAL AUTHORITY) CORPORATE RANGE-1, KOCHI. CENTRAL REVENUE BUILDINGS, I.S.PRESS ROAD, KOCHI, PIN - 682018

-:4:- BY ADVS. JOSE JOSEPH CYRIAC TOM RESPONDENT/S: M/S. DIGITAL MESH SOFTECH INDIA (P) LTD., AGED 52 YEARS 52, SHENOY ROAD,KALOOR, KOCHI REPRESENTED BY ITS DIRECTOR & CEO, MR.RAJI JOHN KARUTHEDATH., PIN - BY ADVS. Gopikrishnan Nambiar M K.JOHN MATHAI(K/413/1984) JOSON MANAVALAN(J-526) KURYAN THOMAS(K/131/2003) PAULOSE C. ABRAHAM(MAH/58/2006) RAJA KANNAN(K/356/2008)

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 13.03.2024, ALONG WITH WA.286/2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: -:5:- A.MUHAMED MUSTAQUE & SHOBA ANNAMMA EAPEN, JJ. -- W.A.Nos.252 and 286 of 2024 -- Dated this the 13th day of March, 2024

J U D G M E N T

A.Muhamed Mustaque, J.

These appeals are preferred by the Income Tax Department challenging the judgment of the learned Single Judge. The question that was considered by the learned Single Judge was whether the Department was justified in reopening an assessment under Section 147 of the Income Tax Act, 1961 after the period of four years from the end of the assessment year. The issue in both the appeals are same, and the same assessee is involved in -:6:- both the proceedings. There is no dispute to the fact that reopening of assessment was after four years. The

Department would contend that in the light of explanation 1 to Section 147 of the Income Tax Act, 1961 when there is suppression on the part of the assessee, nothing prevents the Department from reopening the assessment after four years. The issue was answered in favour of the assessee overruling the objection of the Department.

2. To understand the issue, we looked at the notice issued by the Department. Notice reads as follows:

Whereas I have reasons to believe that your income chargeable to tax for the assessment year 2008-09 has escaped assessment within the meaning of section 147 of the Income Tax Act, 1961.

2. I, therefore, propose to assess/re-assess the income for the

said assessment year and I hereby require you to deliver it to me within 31 days from the service of this notice, a return in the prescribed form of your income for the said assessment year.

3. This notice is being issued after obtaining necessary satisfaction of the commissioner of Income Tax _______________ The Central Board of Direct Taxes. -:7:-

3. Thereafter, the assessee sought reasons for reopening the assessment. Response was received as follows: The assessees claim for exemption u/s.10B of the Act was based on the approval as 100 percent EOU granted under STPI scheme. In the case

CIT Vs.Regency Creations Ltd, the Honourable High Court of Delhi made

it clear that approval granted to a 100 percent EOU set up under STPI scheme cannot be claimed to be an approval under section 10B of the Act. Hence, I have reason to believe that assessees income has escaped assessment within the meaning of section 147 of IT Act 1961.

4. The learned Single Judge noted that the issue related

to the exemption availed by the assessee under Section 10B of the Income Tax Act as 100% Export Oriented Undertakings for a block of ten years. The learned Single Judge also noted Section 147 of the Income Tax Act and opined that, only if there is failure on the part of assessee to disclose all relevant materials, a reopening can be made after four years from the end of assessment year. We specifically noted the reasons for reopening. No reasons have been assigned on the ground that the assessee failed to disclose the relevant information. Jurisdictional fact must exist to reopen assessment after four years. No jurisdictional fact exists, and therefore, the -:8:- assessment cannot be reopened on any other grounds. It is in those circumstances, the learned Single Judge found in favour of the assessee. It is apparent that reopening notice was issued

based on the judgment of the Hon'ble High Court of Delhi in CIT

v. Regency Creations Ltd. [(2013) 255 CTR 63). The Apex Court in CIT v. Simplex Concrete Piles (India) Ltd. [(2013) 11 SCC 373]

held as follows:

1. Heard the learned counsel on both sides. Leave granted.

2. We see no error in the observation made by the Division Bench

> of the High Court in the impugned judgment that once limitation period of four years provided under Sections 147/149(1)(a) of the Income Tax Act, 1961 (for short the Act) expires then the question of reopening by the Department does not arise. In any event, at the relevant time, when the assessment order got completed, the law as declared by the jurisdictional High Court, was that the civil construction work carried out by the assessee would be entitled to the benefit of Section 80-HH of the Act, which view was squarely reversed in CIT v. N.C. Budharaja

and Co. The subsequent reversal of the legal position by the judgment

of the Supreme Court does not authorise the Department to reopen the assessment, which stood closed on the basis of the law, as it stood at the relevant time.

3. The civil appeals are, accordingly, dismissed. No order as

to costs. -:9:- Thus, we find no reason to interfere with the judgment of the learned Single Judge. The appeals stand dismissed. Sd/- A.MUHAMED MUSTAQUE, JUDGE Sd/- SHOBA ANNAMMA EAPEN, JUDGE ms