

**Cit Vs. Essen (P) Ltd.**

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**SooperKanoon Citation :** [sooperkanoon.com/835219](http://sooperkanoon.com/835219)

**Court :** Chennai

**Decided On :** Jul-17-2002

**Reported in :** [2002]124TAXMAN324(Mad)

**Appeal No. :** Tax Case Nos. 1261 & 1262 of 1987 17 July 2002

**Appellant :** Cit

**Respondent :** Essen (P) Ltd.

**Advocate for Pet/Ap. :** T.C.A. Ramanujam, *for the Revenue*

**Judgement :**

ORDER

**V.S. Sirpurkar, J.**

The common question referred to at the instance of the revenue is as under :

'Whether, on the facts and in the circumstances of the case and having regard to the provisions of section 80M of the Income Tax Act, 1961, the Appellate Tribunal is justified in holding that the reopening of the assessment for the year 1971-72/1972-73 is invalid in law and accordingly in cancelling the reassessment made under section 147(b)?'

2. Finding that inspite of the pendency of the reference proceedings for over 10 years, the assessee was not before us, we had directed the department to serve

the assessee again by a private notice. Accordingly, the department had tried to serve the assessee on the address given in the assessment order, i.e., No. 3, Cathedral Road, Madras. However today, the learned senior standing counsel for the department reports that the assessee was not to be found there. It is obvious, therefore, that the assessee who has moved from that address has not bothered to inform the department or this court about the change of his address. References are registered in 1987 and yet, till today, the assessee has not taken steps either to come before this court or to inform the changed address, if any, to the department, which, he was bound to do. In that view, we choose to proceed ex parte against the assessee.

3. The learned senior standing counsel points out that the Tribunal had proceeded on the basis of the earlier law in the case of Cloth Traders (P) Ltd. v. Addl. CIT : [1979]118ITR243(SC) . However, this case seems to have been overruled in another decision of the Supreme Court in the case of Distributors (Baroda) (P) Ltd. v. Union of India : [1985]155ITR120(SC) . Here, the Supreme Court has specifically held that the said decision in the case of Cloth Traders (P) Ltd. (supra) was erroneously decided and it has chosen to overrule the same. We have seen that in the decision, the Tribunal has entirely relied on the law declared in the case of Cloth Traders (P) Ltd. (supra), in holding that the assessment proceedings were not valid and the reassessments were also bad in law and invalid. In fact, in the aforementioned decision in the case of Distributors (Baroda) (P) Ltd. (supra), section 80AA of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') has been held to be having retrospective operation. In that view, the proceedings taken up under section 147(b) of the Act would be in order, even if they pertain to the assessment years 1971-72 and 1972-73. In view of the overruling of the decision, obviously the matters would stand differently and in favour of the revenue. Accordingly, we are of the clear opinion that the Tribunal has erred in taking the view as it did. We set aside the judgment of the Tribunal and answer the question in favour of the revenue and against the assessee. No costs.