**(2009) 08 MAD CK 0241**

**Madras High Court**

**Case No:** Tax Case (Appeal) No. 717 of 2009

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| The Commissioner of Income Tax I | | APPELLANT |
| | Vs | |
| TVS Motor Company Ltd. | | RESPONDENT |

**Date of Decision:** Aug. 4, 2009

**Acts Referred:**

- Income Tax Act, 1961 - Section 139, 142(1), 143(3), 147, 148

**Citation:** (2009) 319 ITR 192

**Hon'ble Judges:** F.M. Ibrahim Kalifulla, J; B. Rajendran, J

**Bench:** Division Bench

**Advocate:** Arun Kurian Joseph, for the Appellant;

**Final Decision:** Dismissed

**Judgement**

B. Rajendran, J.

The assessee has filed its return of income for the assessment year 1999-2000 and the Department has also completed the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act"). Later on, the Department found that there was some reasons to believe that the income chargeable to tax had escaped assessment and initiated the proceedings for re-assessment, after issuing notice u/s 148 of the Act.

2. The main reason put forth by the Department was that the assessee has claimed deduction of excise duty on stock in bonded warehouse u/s 43B of the Act from the excise duty on closing stock. Later on, the Department found that the said excise duty was not actually paid during the relevant year as the goods had not been cleared before the close of the previous year and therefore, the contention of the Department is that such a deduction could not be claimed for that assessment year and therefore the Assessing Officer disallowed the said deduction in the re-assessment on the re-opening of the case. It is pertinent to point out that such

re-assessment is beyond the period of four years.

3. Aggrieved by the orders of the Assessing Officer, the assessee has filed an appeal before the Commissioner of Income Tax (Appeals), who held that the assessee had disclosed fully and truly all material facts necessary for completion of assessment while filing the return and as such the re-opening beyond four years is bad in law and without any jurisdiction.

4. Aggrieved by the orders of the Commissioner of Income Tax (Appeals), the Revenue filed an appeal before the Income Tax Appellate Tribunal. The Appellate Tribunal also held that the re-assessment, having been initiated after four years from the end of the assessment year and there being no finding that there was any failure on the part of the assessee to make a full and true disclosure of material facts, the re-assessment is bad in law and accordingly, dismissed the appeal preferred by the revenue.

5. Aggrieved by the orders passed by the Appellate Tribunal, the revenue has filed this appeal before this Court.

6. We heard Mr. Arun Kurian Joseph, learned Counsel appearing for the appellant. On a cursory perusal of the order of the Tribunal clearly indicates that Section 147 of the Act empowers the Revenue to reopen the assessment. In the proviso, which clearly stipulates the reason for reopening in the case which falls under the category that there was a concealment and only in certain cases, the Authority is empowered to reopen the case. It also clearly makes it mandatory that there should be a failure to disclose fully and truly all material facts. The proviso is extracted below:

Provided that where an assessment under Sub-section (3) of Section 143 or this Section has been made for the relevant assessment year, no action shall be taken under this Section after the expiry of four years from the end of the relevant assessment year, unless any income chargeable to tax has escaped assessment for such assessment year by reason of the failure on the part of the assessee to make a return u/s 139 or in response to a notice issued under Sub-section (1) of Section 142 or Section 148 or to disclose fully and truly all material facts necessary for his assessment, for that assessment year.

7. Relying upon the aforesaid proviso, the Tribunal has given a clear finding that when there was no failure on the part of the assessee to disclose the material facts, such assessment cannot be re-opened after expiry of four years from the end of the relevant assessment year, if the original assessment was completed u/s 143(3) of the Act.

8. At this juncture, it is pertinent to point out that it was not the case of the department that the assessee had not at all revealed the payment of excise duty, but what they have stated is that they have shown the expenditure, claiming exemption u/s 43B of the Act. Since the goods were not cleared in that particular

year, they ought not to have claimed the exemption during the relevant year. When admittedly, this material fact was fully and correctly disclosed and available even at the time of assessment itself, the Assessing Officer or the Authority concerned have not given any reason, much less sufficient reason, to say that this matter was not brought to the knowledge of the department and that there was a wilful suppression of material so as to treat this as an escaped assessment.

9. In such view of the matter, as rightly pointed out by the Tribunal, the following decisions have been rendered by this Court:

(i) In the decision reported in the case of Commissioner of Income Tax Vs. Annamalai Finance Ltd., , it is held as follows:

Held, (i) that the notice for the two assessment years 1992-93 and 1993-94 was issued after the expiry of the period of four years from the end of respective assessment years, violating the proviso to Section 147. The notices were not valid.

(ii) That Section 147 of the Act does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceedings upon a mere change of opinion. The Assessing Officer proposed to reopen the assessment for the year 1994-95 purely based on the change of opinion, namely, the change in the method of accounting of overdue interest on cash or actual receipt basis, when the assessee was following the mercantile system of accounting. The reassessment proceedings were not valid.

(ii) In the decision reported in the case of Commissioner of Income Tax Vs. Elgi Ultra Industries Ltd., , it is held as follows:

dismissing the appeal, that there was no finding that there was failure on the part of the assessee to disclose fully and truly all material facts. Further, all the material facts were available at the time of making the original assessment. The Tribunal applying the right principles had come to the correct conclusion. There was no error or legal infirmity in the order of the Tribunal so as to warrant interference.

(iii) In the decision reported in the case of Commissioner of Income Tax Vs. Elgi Finance Ltd., , it is held as follows:

Held, dismissing the appeal, that when the factual finding was that the assessee-company had fully and truly disclosed all material facts necessary for computing the depreciation allowance in the course of the original assessments completed u/s 143(3) itself, the period of limitation applicable to the reopening for these two years would be a period of four years prescribed in the proviso to Section 147. The reassessments for the assessment years 1992-93 and 1993-94 were clearly barred by limitation.

The Tribunal, following the aforesaid decisions, has rightly held that there is no reason for reopening the case and dismissed the state appeal.

10. Inasmuch as in the present case, there was no finding at all with regard to concealment, as we are governed by the aforesaid ruling, we are satisfied that the order of the Tribunal does not call for any interference and the reasoning given by the Tribunal is sound and correct. Hence, the appeal filed by the revenue is dismissed. No costs.