

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.2656 OF 2008

Supreme Treves Pvt. Ltd.)
8th Floor, Centre Point, 18th)
Road, Chembur, Mumbai-400 071.)..Petitioner.

V/s.

1. Deputy Commissioner of Income-)
tax-10(2), having his office at)
474, Aayakar Bhavan, M.K. Road,)
Churchgate, Mumbai-400 020.)
)
2. Commissioner of Income-tax-X,)
having his office at Aayakar)
Bhavan, M.K. Road, Churchgate,)
Mumbai-400 020.)
)
3. Union of India, through the)
Secretary, Department of)
Revenue, Ministry of Finance,)
North Block, New Delhi-110 001.)..Respondents.

Mr.P.J.Pardiwala, senior Advocate with Jitendra Jain
i/b. Atul Jasani for the petitioner.

Mr.J.S.Saluja, Advocate for the respondents.

CORAM : SMT. RANJANA DESAI AND
J.P.DEVADHAR, JJ.

DATED : 17TH FEBRUARY, 2009.

FINAL JUDGMENT (PER J.P.DEVADHAR, J.)

1. Rule. Rule made returnable forthwith.
Learned counsel for the respondents waives service. By
consent of the parties, the petition is taken up for
final hearing.

2. This petition is filed to challenge the notice dated 28th March, 2008 issued under section 148 of the Income Tax Act, 1961 ('Act' for short). By the said notice the assessment for AY 2002-03 is sought to be reopened. As the reassessment order was passed on 30/12/2008 during the pendency of the present petition, the petition has been amended to challenge the order of reassessment.

3. The facts relevant for the present petition are that the petitioner is a Company engaged in the business of manufacture and sale of automobile insulation / trim components, floor covering of carpets, etc.

4. For the A.Y. 2002-2003 the assessee had filed its return of income which was duly assessed under section 143(3) of the Act on 24/1/2005, by allowing depreciation on goodwill as claimed by the assessee.

5. By the impugned notice dated 28/3/2008 the assessment for A.Y. 2002-2003 is sought to be reopened solely on the ground that goodwill is not an intangible asset and, therefore, not eligible for depreciation under the provisions of section 32(3)(b) of the Act.

In the reasons recorded for reopening the assessment, it is stated that the goodwill is not an intangible asset and since the assessee had not disclosed the nature of goodwill on which it had claimed the depreciation, there was failure on the part of the assessee to disclose fully and truly all the material facts necessary for assessment and hence the assessment is being reopened.

6. The assessee objected to the reopening of the assessment inter alia on the ground that there was no failure on the part of the assessee to disclose fully and truly all material facts. However, by an order dated 30/9/2008 the objections were rejected. Hence this petition.

7. On 3rd December, 2008 the above writ petition was moved for admission and interim relief, when the counsel for the revenue appeared and sought adjournment for taking instruction and in the meantime agreed to maintain status quo. Accordingly, the petition was adjourned to 17th December, 2008. On 17th December, 2008 the advocate for the revenue tendered affidavit in reply to oppose admission of the petition. To enable the petitioner to consider the affidavit in reply, the petition was adjourned beyond Christmas Vacation i.e. adjourned to 12/1/2009. Presuming that

the status quo order was till the reply was filed, it appears that the assessing officer purported to pass the reassessment order during the pendency of the writ petition. The petitioner moved the Vacation Court seeking stay of the proceedings, but the same was declined. Thereafter, the reassessment order was passed on 30/12/2008, which is challenged by amending the writ petition.

8. The short question to be considered in this Writ Petition is, whether the reopening of the assessment for AY 2002-03 beyond four years from the end of the AY 2002-03 is justified? In other words, the question is, whether the condition precedent for reopening of the assessment beyond four years from the end of the relevant assessment year have been fulfilled in the present case?

9. Under section 147 of the Act, assessments made under section 143(3) of the Act can be reopened after the expiry of four years from the end of the relevant assessment year, if the assessing officer has reason to believe that any income chargeable to tax has escaped assessment by reason of the failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment of that assessment year.

10. In the present case, it is the case of the revenue that the assessee had not disclosed the nature of the goodwill and, therefore, there was failure to disclose fully and truly all materials facts.

11. There is no merit in the above argument because, if according to revenue, no depreciation is allowable on the goodwill, then, it would be wholly irrelevant to consider the nature of the goodwill. In other words, disclosing the nature of the goodwill would be relevant only if the contention of the revenue is that grant of depreciation depends upon the nature of goodwill. In the present case, the specific case of the revenue is that the 'goodwill' is not an intangible asset and hence not eligible for depreciation. In such a case, reopening of the assessment on the ground that the assessee has not disclosed the nature of the goodwill and, therefore, there is failure on the part of the petitioner to disclose fully and truly all materials facts cannot be accepted.

12. In any event, perusal of the return of income filed by the petitioner, particularly the notes and the schedule annexed to the Balance Sheet (see pages 44, 53, 60 & 66 of the petition) clearly show that all the facts relating to the claim of

depreciation on goodwill have been fully disclosed by the petitioner. In these circumstances, the contention of the revenue that the petitioner has failed to disclose the nature of the goodwill is liable to be rejected.

13. We make it clear that we are not expressing any opinion as to whether the goodwill is a commercial right or has the characteristics similar to intangible assets as enumerated in Explanation 3 to section 32 of the Act. That issue may be considered in an appropriate case.

14. In the present case, we are only concerned with the issue as to whether the petitioner had failed to disclose fully and truly all material facts regarding the claim of depreciation on the goodwill ? Once we hold that there was no failure on the part of the petitioner to disclose all facts, the reopening of the assessment for AY 2002-03 after the expiry of 4 years cannot be sustained.

15. Reliance placed by the counsel for the revenue on the decision of the Apex Court in the case of **C.I.T. V/s. Rajesh Jhaveri** reported in **291 I.T.R. 500 (S.C.)** is misplaced because that decision merely provides that the assessing officer can reopen the

assessment only if the ingredients of section 147 are fulfilled. In the present case, the ingredients of section 147 are not fulfilled. Hence reopening of the assessment cannot be sustained.

16. Accordingly, the notice issued under section 148 of the Act on 28/3/2008 after the expiry of four years from the end of AY 2002-03 is quashed and set aside. Consequently, the reassessment order passed on 30/12/2008 pursuant to the notice dated 28/3/2008 is also quashed and set aside.

17. Rule is made absolute in the above terms, however, with no order as to costs.

(SMT. RANJANA DESAI, J.)

(J.P.DEVADHAR, J.)