

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BENCH 'F' NEW DELHI**

**ITA Nos.1833 & 1834/Del./2006  
Assessment Years: 1997-98 & 98-99**

**M/s BHARAT HEAVY ELECTRICALS LTD  
CORPORATE FINANCE, BHEL HOUSE  
SIRI FORT, NEW DELHI-110049  
PAN NO:AAACB4146P**

**Vs**

**DEPUTY COMMISSIONER OF INCOME TAX  
CO CIRCLE-2(1), NEW DELHI**

**G E Veerabhadrapa, President and A D Jain, JM**

**Dated: March 11, 2011**

**Appellant Rep by:** Shri K Sampath, Adv.  
**Respondent Rep by:** Shri J S Naurath, CIT(DR)

**ORDER**

**Per: A D Jain:**

These are assessee's appeals for AYs 1997-98 & 98-99. Since common issues are involved in both these appeals, they are being disposed of by this common order. For the sake of convenience, the facts are being taken from I.T.A. No.1833.

2. The first issue is the assessee's challenge to the action of the CIT(A) in upholding the reopening of the completed assessment of the assessee for both the years. The assessee contends that the CIT(A) has erred in upholding the issuance of re-assessment notice after the expiry of four years from the end of the relevant assessment year, even though there was no failure on the part of the assessee company to disclose fully and truly all material facts necessary for the assessment, rendering the notices defective and void ab initio.

3. It has been contended on behalf of the assessee that the assessee company has submitted its return of income for AY 1997-98 on 26.11.97, declaring income of Rs.756.48 crores; that the assessment was completed u/s 143(3) of the I.T. Act on 7.2.2000, at an income of Rs.793.72 crores; that the CIT(A) vide order dated 29.03.2000 granted partial relief to the assessee; that the Tribunal vide order dated 20.3.2009 decided the assessee's appeal along with said appeals for other issues; that in the satisfaction note recorded by the AO for reopening the completed assessment, the AO recorded, inter alia, that deduction u/s 80-O of the Act was claimed by the assessee on gross receipts of Rs.630.92 lakhs without deducting the proportionate expenses incurred to earn such income; that the assessee had credited simple interest in the accounts, on credits extended to Andhra Pradesh State Electricity Board (APSEB) in respect of supplies made to Vijaywada TPS, although the

memorandum of understanding provided for charging compound interest; and that since the assessee was following mercantile system of accounting, interest accrued to the extent of the difference on simple interest and the compound interest was required to be brought to tax; that the CIT(A) approved the proposal of the AO, observing that in both the years there was prima facie case for taking action u/s 148 of the Act; that the reasons recorded by the AO himself shows that there was no new material received by him for recording the satisfaction note; that even in the satisfaction note, there is no allegation by the AO of any failure on the part of the assessee in disclosing fully and truly the material facts necessary for the assessment; and only the file was perused again after the completion of the assessment; that in "*CIT vs. Indian Farmers Fertilizers Cooperative Ltd.*", 177 *Taxman* 379 (Del.) (copy placed on record), it has been held that action under section 147/148 of the Act after expiry of four years from the end of the relevant assessment year is not justified where in the reasons recorded for reopening, there is no allegation that the assessee had failed to disclose fully or truly all material facts necessary for assessment. It has been contended that four years from the end of the relevant assessment year (1997-98) in the present case expired on 31.3.2002; that the approval of the AO's satisfaction for reopening the completed re-assessment was granted on 04.03.04; that as such, the Commissioner's approval was belated by two years; and that as such, the re-assessment proceedings being in contravention of the proviso to section 147 of the Act, the same be quashed.

4. On the other hand, supporting the impugned order in this regard, Ld.DR has contended that as is clear from the satisfaction note recorded by the AO, the deduction u/s 80-O of the Act was claimed by the assessee on gross receipts of Rs.630.92 crores without deducting the proportionate expenses incurred to earn such income; that as on the dates of the filing of the return of income for these years, the law was that deduction u/s 80-O of the Act, was to be on the net receipts and not on gross receipts; that then, as available from the satisfaction note, the assessee had credited simple interest on credits extended to APSEB, concerning supplies made to Vijayawada TPS despite the fact that the memorandum of understanding required compound interest to be charged; that this itself was reason good enough to reopen the completed assessment. It has thus been contended that there being no merit in the appeal of the assessee, the same be dismissed.

5. We have heard the parties on this issue and have perused the material available on record. Undisputedly, the reopening of the completed assessment for both the concerned years came after the expiry of four years from the end of the relevant assessment years. The issue up for consideration is as to whether such reopening of completed assessment for both the years involved, is justified in law, considering the first proviso to section 147 of the Act. Section 147 and the first proviso thereto, of the I.T. Act, read as follows:

*"147. If the AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may, subject to the provisions of sections 148 to 153, assess or reassess such income and also any other income chargeable to tax which has escaped assessment and which comes to his notice subsequently in the course of the proceedings under this section, or re-compute the loss or the depreciation allowance or any other allowance, as the case may be, for the assessment year concerned (hereafter in this section and in sections 148 to 153 referred to as the relevant assessment year) :*

*Provided that where an assessment under 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 under section 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."*

6. Therefore, as per the first proviso to section 147 of the Act, in a case where a regular assessment has been completed for an assessment year, such completed assessment shall not be reopened after the expiry of four years from the end of the relevant assessment year, unless due to the failure on the part of the assessee, inter alia, to disclose fully and truly all material facts necessary for that assessment, any income chargeable to tax has escaped assessment.

7. In the present case, undeniably, the completed assessments for both the years have been reopened beyond the prescribed period of four years from the end of the relevant assessment year. However, there has been no allegation by the AO that the assessee had failed to disclose fully and truly all material facts necessary for either of the assessments. A copy of the satisfaction note recorded by the AO and the CIT(A)'s approval thereon, for assessment year 1997-98, has been placed at page 77 of the assessee's paper book (APB) for assessment year 1997-98. These run as follows:

#### **SATISFACTION NOTE**

**M/S Bharat Heavy Electricals Ltd.**

**A.Y. 1997-98**

The Return of Income was filed on 26.11.97 at an income of Rs.7,56,47,81,570. Scrutiny u/s 143(3) was completed on 7.2.2000 at an income of Rs.7,93,72,43,769.

It is noted that the deduction u/s 80-O was claimed by the assessee on gross receipts of Rs.630.92 lakh without deducting the proportionate expenses incurred to earn such income.

The assessee had credited simple interest in the accounts, on credits extended to Andhra Pradesh State Electricity Board (APSEB) in respect of supplies made to Vijayawada TPS, although the Memorandum of Understanding provided for charging compound interest. As the assessee was following mercantile system of accounting, interest accrued to the extent of difference between simple interest and compound interest is required to be brought to tax.

In view of above, I have reason to believe that the true income of the assessee has escaped assessment, thus, proceedings u/s 147/148 are taken up hereby subject to approve.

Submitted.

**Sd/-**  
**Dy. Commissioner of Income Tax**  
**Circle 2(1), New Delhi.**

In both the issues there is a prima facie case for taking action u/s 148 of the I.T. Act, 1961. It is recommended that approval may be granted by CIT-I, Delhi.

**Sd/-**  
**3/3/04**

CIT-I, New Delhi.

Approved as proposed

**Sd/-**  
**4/3/04**

8. A copy of the satisfaction note for assessment year 1998-99, is contained at page 68 of the assessee's paper book for assessment year 1998-99. This satisfaction note and the CIT(A)'s approval thereon read as under:

**SATISFACITON NOTE**

**M/s Bharat Heavy Electricals Ltd.**

**A.Y. 1998-99**

The Return of Income was filed on 26.11.98 at an income of Rs.11,01,30,52,670. Scrutiny u/s 143(3) was completed on 20.3.01 at an income of Rs.11,02,40,17,253.

It is noted that the deduction u/s 80-O was claimed by the assessee on gross receipts of Rs.68.92 lakh without deducting the proportionate expenses incurred to earn such income.

Also noted that the assessee had credited simple interest in the accounts, on credits extended to Andhra Pradesh State Electricity Board (APSEB) in respect of supplies made to Vijayawada TPS, although the Memorandum of Understanding provided for charging compound interest. As the assessee was following mercantile system of accounting, interest accrued to the extent of difference between simple interest and compound interest is required to be brought to tax.

Further, it is noted that the 9th year deduction u/s 80IA, on account of Nuclear Steam Generators (Trichy), amounting to Rs.6,30,000 has wrongly been considered whereas the same was being claimed u/s 80-I in earlier 8 years.

In view of above, I have reason to believe that the true income of the assessee has escaped assessment, thus, proceedings u/s 147/148 are taken up hereby subject to approve.

Submitted.

**Sd/-**  
**Dy. Commissioner of Income Tax**  
**Circle 2(1), New Delhi.**

The specific reasons mentioned by A.O. adequately justify the proposed action u/s 148 of the I.T. act 1961. it is recommended that CIT-I, Delhi may accord the approval necessary before the issue of notices.

Submitted please.

**Sd/-**  
**3/3/04**

CIT-I, New Delhi.

Approved as proposed

**Sd/-**  
**4/3/04**

9. It is thus evident that for neither of the years has there been any allegation by the AO that the assessee failed to disclose fully and truly all material facts necessary for its assessment for these years. Now, this is in direct violation of the provisions of the first proviso to section 147 of the Act. The said proviso carries a mandate when it employs the word "shall" in requiring that no completed assessment shall be reopened unless income chargeable has escaped assessment for the reason of the failure of the assessment to disclose fully and truly all material facts necessary for its assessment for the relevant assessment year. Non-compliance with the first proviso to section 147, therefore, renders the reopening of a completed assessment in the absence of any failure on the part of the assessee to disclose fully and truly all material facts necessary for its assessment for the relevant assessment year, void ab initio. Moreover, in the present case, as discussed hereinabove, not even an allegation of such failure has been made against the assessee company by the AO for either of the assessment years involved. Reliance by the assessee on Indian Farmers Fertilizers Coop. Ltd. (supra) is apt. Therein, it has been held that where in the reasons recorded in reopening, there was no allegation that the assessee had failed to disclose fully or truly all material facts necessary for its assessment, the AO was unjustified in taking action u/s 147/148 after the expiry of four years from the end of the respective relevant assessment year. In the present case also, the Department has not been able to show, the AO to have recorded, in the reasons for reopening the assessment for both the years, any allegation that the assessee had failed to disclose fully and truly all material facts necessary for its assessment, even though both the assessments were reopened after the expiry of four years from the end of the relevant assessment years.

10. The CIT(A) has rejected the assessee's objection in this regard by observing that the re-assessment proceedings were within limitation, since, the notices u/s 148 of the Act were issued within six years from the end of the relevant assessment year, after taking approval of the CIT(A) as stipulated in section 151 of the Act. In this regard, it would be appropriate to reproduce here section 151(1) of the Act:

*151. (1) In a case where an assessment under sub-section (3) of section 143 or section 147 has been made for the relevant assessment year, no notice shall be issued under section 148 by an AO, who is below the rank of Assistant Commissioner or Deputy Commissioner, unless the Joint Commissioner is satisfied on the reasons recorded by such AO that it is a fit case for the issue of such notice."*

11. Thus, section 151(1) provides that in a case of a completed regular assessment, a notice u/s 148 of the Act is to be issued by an AO who is below the rank of Assistant Commissioner or Deputy Commissioner, only if the Joint Commissioner is satisfied on the reasons recorded by such AO that it is a fit case for the issuance of such notice. The provisions of section 151(1), in no way override the provisions of the first proviso to section 147 of the Act. It is, rather, the stipulation contained in the first proviso to section 147, as discussed hereinabove, which takes precedence and unless there is an allegation of the assessee having failed to disclose fully and truly all material facts necessary for his assessment, no completed assessment can be reopened after the expiry of four years from the end of the relevant assessment year.

12. Therefore, for the above discussion alone, following Indian Farmers Fertilizers Coop. Ltd. (supra), the reopening of the completed assessments for both assessment years 1997-98 and 98-99 are cancelled.

13. Since the reopening of the completed assessment for both the assessment years has been cancelled for the primary reason of there being no allegation against the assessee of not having disclosed fully and truly all material facts for its assessment for both the assessment years 1997-98 and 98-99, there remains nothing further to be adjudicated.

14. In the result, both the appeals of the assessee are allowed.

(Order pronounced in open court on 11.3.2011.)