

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 14TH DAY OF DECEMBER 2020

PRESENT

THE HON'BLE MR. JUSTICE ALOK ARADHE

AND

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

I.T.A. NO.112 OF 2016

C/W

I.T.A.NO.113 OF 2016

I.T.A.NO.112/2016

BETWEEN:

M/S. MERCK LIFE SCIENCE PVT. LTD.
(PREVIOUSLY KNOWN AS M/S. MILLIPORE
(INDIA) PVT. LTD.)
50A, 2ND PHASE, RING ROAD
PEENYA, BENGALURU-560058.

... APPELLANT

(BY SRI. ASHOK A. KULKARNI, ADV.,)

AND:

THE DEPUTY COMMISSIONER
OF INCOME TAX, CIRCLE-12(1)
14/3, 4TH FLOOR
RASTROTHANA BHAVAN
(OPP. RBI), NRUPATHUNGA ROAD
BENGALURU-560001.

... RESPONDENT

(BY SRI. K.V. ARAVIND, ADV.)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT,
1961 ARISING OUT OF ORDER DATED 30.09.2015 PASSED IN ITA
NO.164(B)/2013 FOR THE ASSESSMENT YEAR 1997-98 AND
RESTORE THE ORDER OF THE COMMISSIONER OF INCOME TAX
(APPEALS) No.178/C-12(1)/CIT(A)-III/BNG/06-07 DATED

04.09.2012 (ANNEXURE-E) SET ASIDE THE IMPUGNED ASSESSMENT ORDER AACCM1226B/MA-135 DATED 30.08.2006 FILED AS (ANNEXURE-C), PRAYING TO:

(I) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE.

(II) ALLOW THE APPEAL BY SETTING ASIDE THE ORDER OF THE INCOME TAX APPELLATE TRIBUNAL IN ITA NO.164(B)/2013 DATED 30.09.2015 (ANNEXURE-F) FOR ASSESSMENT YEAR 1997-98 AND RESTORE THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS) NO.178/C-12(1)/CIT(A)-III/BNG/06-07 DATED 04.09.2012 (ANNEXURE-E) SET ASIDE THE IMPUGNED ASSESSMENT ORDER AACCM1226B/MA-135 DATED 30.08.2016 FILED (ANNEXURE-C) & ETC.

I.T.A.NO.113/2016

BETWEEN:

M/S MERCK LIFE SCIENCE PVT. LTD.
(PREVIOUSLY KNOWN AS M/S MILLIPORE
(INDIA) PVT. LTD.)
50A, 2ND PHASE, RING ROAD
PEENYA
BENGALURU - 560 058.

... APPELLANT

(BY SRI.ASHOK A KULKARNI, ADV.,)

AND:

THE DEPUTY COMMISSIONER
OF INCOME TAX, CIRCLE - 12(1)
14/3, 4TH FLOOR
RASTROTHANA BHAVAN
(OPP RBI)
NRUPATHUNGA ROAD
BANGALURU - 560 001.

... RESPONDENT

(BY SRI.K.V.ARAVIND, ADV.)

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THIS ITA IS FILED UNDER SECTION 260-A OF I.T. ACT, 1961 ARISING OUT OF ORDER DATED 30.09.2015 PASSED IN ITA NO.165(B)/2013 FOR THE ASSESSMENT YEAR 1998-99 RESTORE THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEAL) NO.36/C-12(1)/CIT(A)-III/BNG/0607 DATED 04.09.2012

ASSESSMENT ORDER NO. NIL DATED 15.03.2006 FILED AS (ANNEXURE-B) SUITABLY MODIFY IT AS SOUGHT IN THE APPEAL.

THESE ITAs COMING ON FOR HEARING, THIS DAY, **ALOK ARADHE J.**, DELIVERED THE FOLLOWING:

COMMON JUDGMENT

These appeals under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act for short) has been preferred by the assessee. The subject matter of I.T.A.No.112/2016 pertains to the Assessment year 1997-98, whereas, subject matter of I.T.A.No.113/2016 pertains to the Assessment year 1998-99 . Since, in both the appeals same substantial questions of law arise for consideration though for different Assessment Years, they were heard together and are being decided by this common judgment. The appeals were admitted by a bench of this Court vide order dated 06.03.2018 on the following substantial questions of law:

(i) *Whether on the facts and in the circumstances of the present case, ITAT was*

not right in concluding that this court, in the order dated 19.11.2012 in ITA No.648/2007 had upheld the validity of reopening?

(ii) Whether on the facts and in the circumstances of the case, the escapement of the income, if any, came about because of non disclosure by the assessee warranting action under proviso to Section 147 of the Income Tax Act, 1961?

2. Facts leading to filing of these appeals briefly stated are that assessee is engaged in the business of filtration process systems and high purity water systems. The assessee filed its return of income for the Assessment Year 1997-98 on 24.11.1997 and the return of income for Assessment Year 1998-99 on 20.11.1998. The assessee declared the taxable income of Rs.1,66,98,390/- and Rs.2,37,58,960/- respectively. The Assessing Officer by an order dated 05.11.1999 and 16.03.2001 respectively passed an order of assessment under Section 143(3) of the Act and allowed the

deduction claimed under Section 80-IA of the Act. Thereafter, notices dated 25.03.2004 and 15.03.2005 were issued under Section 148 of the Act, by which re-assessment proceedings were initiated and the assessee was asked to file the returns in respect of the Assessment Years in question. The assessee in response to the aforesaid notice, filed the return of income declaring the same returns of income, which was initially declared.

3. The Assessing Officer by orders dated 30.08.2006 and 15.03.2006 inter alia held that the assessee was dealing in imported spare parts and the income arising out this trading act was included in the claim made under Section 80-IA of the Act. The Assessing Officer passed an order of assessment denying the relief of deduction under Section 80-IA of the Act. The assessee thereupon filed appeals before the Commissioner of Income Tax (Appeals) who by an order dated 04.09.2012 quashed the order of

assessment passed by the assessing authority and allowed the appeals preferred by the assessee. Thereupon the revenue filed an appeal before Income Tax Appellate Tribunal (hereinafter referred to as 'the tribunal' for short). The assessee filed the cross objections. The tribunal by an order dated 30.09.2015 upheld the initiation of the re opening of the assessment. In the aforesaid factual background, the assessee has filed these appeals.

4. Learned counsel for the assessee submitted that while passing the impugned order, the tribunal has completely misread the judgment by this court dated 19.11.2012 for Assessment Year 1996-97. It is further submitted that in the aforesaid order there is no finding recorded by this court with regard to validity of the re opening of the proceedings for assessment on the ground of non disclosure and full information with regard to sales of spares as well as manufactured goods including opening and closing balance thereof were

provided along with the original return of income filed by the assessee. It is further submitted that the Commissioner of Income Tax (Appeals) had dealt with the aforesaid aspect of the matter in detail which was over looked by the tribunal and in a cursory manner the order of Commissioner of Income Tax (Appeals) was set aside. Admittedly, the re-assessments were made after a period of four years from the end of respective Assessment Years and therefore, the proviso to Section 147 of the Act was clearly applicable to the fact situation of the case. In support of aforesaid submission, reliance has been placed on decision of the Supreme Court in **'CIT VS. KELVINATOR OF INDIA LTD', 320 ITR 561** and **'ACIT VS. ICICI SECURITIES PRIMARY DEALERSHIP LTD., 348 ITR 299.**

5. On the other hand, learned counsel for the revenue submitted that assessment for the Assessment Year 1997-98 was reopened under Section 148 of the Act on the basis of information regarding wrong claim

made by the assessee available and detected in the course of assessment proceedings for the Assessment Year 2000-01. It is further submitted that the tribunal by placing reliance on the judgment of this court in I.T.A.No.648/2007 in the case of assessee has upheld the reopening of the assessment proceeding. It is also urged that while examining the reopening of the assessment, prima facie opinion regarding statement of income was sufficient and the same need not be established with conclusive proof or evidence. It is further submitted that subsequent facts, which comes to the knowledge of Assessing Officer can be taken into consideration to decide whether the assessment proceedings should be reopened or not. In support of aforesaid submissions, reliance has been placed on decisions of Supreme Court in '**CALCUTTA DISCOUNT CO. LTD. VS. INCOME-TAX OFFICER**', (1961) 41 ITR 191 (SC), and '**NEW DELHI TELEVISION LTD. DEPUTY COMMISSIONER OF INCOME TAX**', (2020)

116 TAXMANN.COM 151 (SC).

6. We have considered the submissions made by learned counsel for the parties and have perused the record. Before proceeding further, it is apposite to take note of proviso to Section 147 of the Act, which reads as under:

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 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:

7. The Commissioner of Income Tax (Appeals) for the Assessment Year 1996-97 had dealt with the issue of reopening and the aforesaid order was upheld in appeal by the tribunal. Being aggrieved,, the assessee had filed I.T.A.No.648/2007 and the order of the tribunal was upheld. However, it is pertinent to mention here that there was no specific finding with regard to validity of re opening of the assessment. This court in para 9 of the aforesaid judgment, reads as under:

It is the contention of the assessee that the exemption given initially in the first year is accepted and the same should be continued for further years is a question left open to be canvassed before the Assessing Officer. The question whether making of water filter amounts to industrial and manufacturing activity is also kept open for consideration. In that view of the matter, the order of the tribunal is upheld. The Assessing Officer shall take note of the observations made above while making assessment and granting deductions.

8. It is pertinent to mention here that the Commissioner of Income Tax (Appeals) had held that full information in respect of sales of spares as well as manufactured goods including opening and closing balances was provided by the assessee along with original return and the Commissioner of Income Tax (Appeals) had referred to the following documents:

(a) Division wise Profit and Loss account, schedules and computation of income starting with Profit Before Tax (PBT) as per financial statements.

(b) Computation of eligible profit for deduction under Section 80-IA is Rs.1,48,65,534/- consequent deduction under Section 80-IA for Assessment Year 1997-98 is Rs.44,59,660/-

(c) Similarly, in I.T.A.No.113/2016 relating to Assessment Year 1998-99 computation of eligible profit for deduction under Section 80-IA is Rs.1,99,90,405/- and consequent deduction is Rs.59,97,122/-.

9. However, the tribunal vide impugned order held as follows:

Thus the Hon'ble jurisdictional High Court had upheld the re-opening done for Assessment Year 1996-97. The re-openings done for assessment years 1997-98 & 1998-99, which are impugned also emanate from the same set of facts and circumstances. We are therefore, of the opinion that the CIT(A) fell in error in holding the re-assessment to be invalid. We set aside the order of the CIT(A) in this regards. Ground No.2 of the revenue stands allowed.

10. Thus, it is evident that from the judgment passed by this court in I.T.A.No.648/2007, the issue with regard to reopening of the assessment proceedings did not emanate. The tribunal has dealt with the aforesaid issue in a cursory manner and while doing so, has misread the judgment dated 19.12.2012 passed by this court in I.T.A.No.648./2007. Accordingly, the first substantial question of law is answered in favour of the

assessee and against the revenue.

11. From perusal of the extracted portion of the order passed by the tribunal, it is evident that the order passed by the tribunal has been passed in a cryptic and cavalier manner and well reasoned order passed by the Commissioner of Income Tax (Appeals) has been set aside without assigning any cogent reasons. Therefore, in the peculiar facts of the case, we deem it appropriate to quash the order of the tribunal and to remit the matter to decide the issue with regard to reopening of the assessment afresh by a speaking order. Therefore, it is not necessary to answer the second substantial question of law.

Accordingly, the appeals are disposed of.

**Sd/-
JUDGE**

**Sd/-
JUDGE**