IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2025

CORAM

THE HONOURABLE MR.K.R.SHRIRAM, CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

T.C.A.No.475 of 2012

Sterling Tree Magnum India
Ltd, New No.2, Old No.21,
1st St, Viswanathapurm,
Kodambakkam, Chennai. ... Appellant

Vs

The Assistant Commissioner of Income Tax,
Company Circle VI Chennai. ... Respondent

Prayer: Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of Income Tax Appellate Tribunal, "A" Bench, Chennai, dated 10.02.2012 passed in IT.A.No.1672/Mds/2010 for the Assessment Year 2002-03.

For Appellant : Mr.I Dinesh
for M/s.Philip George

For Respondent : Mr.J.Narayanasamy
Sr. Standing Counsel

JUDGMENT

(Delivered by the Hon'ble The Chief Justice)

Appellant/assessee is engaged in the business of development, maintenance and sale of teak trees on unit basis to various customers. As per the scheme, appellant would allot teak equity units to the allottees, who would be entitled to collect the sale proceeds of the teak trees on completion of the tenures specified in the contract. The amount collected from the allottees consists of two parts, one pertaining to marketing expenses and the other towards upkeep of the trees for the period specified, which is 20 years.

2. It is stated that till the year ending 31.03.2000, assessee company had been recognizing 1/20th of the amount collected towards upkeep of the trees and the entire amount pertaining to marketing expenses as its income every year. Subsequent to the formulation of Collective Investment Scheme by the SEBI, appellant changed its method of accounting with effect from 01.04.2000. After 01.04.2000, the entire sale proceeds to teak equity units

would be treated as a liability and would be taken to the liabilities side of the balance sheet. All the expenses incurred for development and upkeeping of teak plantation are classified as crop development expenses and shown separately. The amount collected from the allottees is presented as “fixed assets” of the balance sheet under the head “unit capital”. As and when the sale of teak trees happens either in full or part, the sale proceeds would be taken to the profit and loss account and adjusted with the corresponding expenditure.

3. In the first year after the change in accounting policy, viz., year ending 31.03.2001, appellant company disclosed all these facts in the balance sheet and had also left a note as to the tax implications consequent to the change in method of accounting. The notes on accounts, auditor's report and the Director's report clearly discussed about the change in the method of accounting.

4. For Assessment Year 2002-03, which is the year under consideration, appellant filed its return of income on 30.03.2004. The change in accounting policy was also disclosed in the balance sheet. The

notes on accounts, Auditor's report and Directors' reports also disclosed about the change in the method of accounting. The return of income was taken up for scrutiny and the Assessing Officer, after verifying the details, completed the assessment by an order dated 31.03.2005 reducing the loss to Rs.1,13,70,518/- as against the loss admitted of Rs.1,46,97,005/-. The Assessing Officer, in particular, disallowed a portion of the expenses claimed for the reason that there was no sale of teak equity units in the said order and that there was no income return from the said activity.

5. Appellant thereafter received a notice dated 24.03.2009 under Section 148 of the Income Tax Act, 1961 (the Act). Reasons to believe were called for and appellant was provided the same vide a communication dated 10.11.2009. Appellant filed its objections, which were rejected and a reassessment order came to be passed on 24.12.2009. Appellant carried its appeal before the Commissioner of Income Tax (Appeals) – V, Chennai [hereinafter referred to as 'CIT (A)'], who confirmed the same. This was followed by an appeal to the Income Tax Appellate Tribunal [hereinafter referred to as 'ITAT'], which also confirmed the assessment order. Appellant's submission on the jurisdictional issue that there was no failure

to disclose fully and truly any material fact necessary for assessment, was not accepted by the ITAT.

6. Against the order of the ITAT, this Appeal is preferred and while admitting the appeal, the following four substantial questions of law were framed on 10.01.2013.

> 1. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that the disclosure made by the assessee in the return of income is not full and true disclosure and hence the re-opening of assessment is valid?
>
> 2. Whether on the facts and circumstances of the case, the Income Tax Appellate Tribunal was right in holding that when the Assessing Officer looks at the balance sheet and profit & loss account it would not have come to his attention about the change in method of accounting; more so, when it has been stated in the notes of accounts, auditor's report and directors' report?
>
> 3. Whether the view taken by the Tribunal that notes of accounts, auditor's report and director's report do not form part of the balance sheet or profit and loss account but are independent of them is tenable in law?
>
> 4. Whether on the facts and circumstances of the case in the absence of failure on the part of the Appellant to disclose fully and truly any material fact necessary for assessment, the notice u/s.148 issued after the expiry of four years from the end of assessment year is illegal and barred by limitation?"

7. It will be useful to reproduce the reasons recorded and the same read as under:

> *"The assessee is a company engaged in the business of development, maintenance and sale of teak trees on unit basis. Till the year ending 31.03.2000, the assessee company had recognized the amount collected on sale of tree units as its income. Out of the income so received, part of it was offered as income in the year in which sales took place and the balance amount was treated as deferred income over a period of scheme which was taken to balance sheet as "Advances for Plantation Maintenance". However, from 01.04.2000 there was a change in the accounting policy of the assessee. According to the new accounting policy amount received on sale of teak equity was treated as receipt towards sale of units of the scheme and taken to Balance Sheet as "Source of Fund" on the liability side. All the expenses that are incurred for development and unkeep of teak plantation are classified as "Crop Development Expenses" between current assets and fixed assets. The audit also, while certifying the accounts of the assessee, in the report has stated that the company has adopted the accounting norms as prescribed under SEBI (Collective Investment Schemes) Regulation Act, 1999."*

8. The reasons itself indicate that the opinion of the officer to believe there was an escapement of income itself was based on the returns and accounts filed by assessee. It accepts that out of the income received, part of it was offered as income in the year in which the sales took place and assessee treated the balance amount as deferred income and from 01.04.2000, assessee changed the accounting policy and even the audit, while certifying the accounts of the assessee, in the report has stated that

the company has adopted the accounting norms as prescribed under SEBI (Collective Investment Schemes) Regulation Act, 1999. But there was no provision in the Act for deferment of income spreading over a period of scheme being twenty years. Admittedly, the proviso to Section 147 of the Act would apply.

9. The fact that assessee has changed the accounting policy has been mentioned in the Auditor's report and Director's report etc., and has also been accepted by the ITAT. The ITAT strangely, and without any justification, says that the Assessing officer would not have noticed the endorsement by assessee that there was change in the accounting policy and that it was following based on the SEBI (Collective Investment Schemes) Regulation Act, 1999. Even the Assessing Officer does not say that, but, the ITAT, in its wisdom, assumes that the Assessing Officer might not have noticed. But still that would not amount to failure on the part of assessee to fully and truly disclose the material facts for requirements for assessment.

10. In the circumstances, we answer the questions of law, which were

framed on 10.01.2013, in favour of assessee.

Tax Case Appeal stands allowed. There shall be no order as to costs.

(K.R.SHRIRAM, C.J.) (SUNDER MOHAN, J.)

24.06.2025

Index: Yes/No
Neutral Citation : Yes/No
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To

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THE HON'BLE CHIEF JUSTICE
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