

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH 'A', MUMBAI.**

**Before Shri R.K. Gupta, J.M. and Shri J. Sudhakar Reddy, A.M.**

I.T.A. No. 1307/Mum/2008  
Assessment Year : 1999-2000.

Asstt. Commissioner of Income-tax,  
17(3), Mumbai.

**Vs.** M/s K. Mohan & Co.  
(Exports),  
61 Rose Cottage,  
Dr. S.S. Road, Parel,  
Mumbai – 400012  
PAN AAAAK0022F

Appellant

Respondent

Appellant by : Shri Mahua Sarkar  
Respondent by : Shri Vijay Mehta.

**ORDER**

**Per J. Sudhakar Reddy, A.M.**

This is an appeal filed by the Revenue directed against the order of the CIT(Appeals)-XXVII, Mumbai dated 19-11-2007 for the assessment year 1999-2000 on the following ground :

“ On the facts and in the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals) erred in holding that re-assessment proceedings initiated by the A.O. beyond the period of 4 years from the end of the assessment year in question is bad in law and without jurisdiction and therefore invalid.”

2. We have heard Mr. Mahua Sarkar, learned DR and Mr. Vijay Mehta, learned counsel for the assessee.

3. On a careful consideration of the facts and circumstances of the case, we are of the considered opinion that the reopening of the case

beyond the period of 4 years is bad in law, as the original assessment was completed u/s 143(3) of the Act on 21-03-2002 and there is no allegation whatsoever that the assessee has failed to disclose the material facts necessary for making the assessment. The reasons recorded for reopening read as follows :

“ The AO has recorded the following reasons for reopening the assessment for the assessment year 1999-2000.

“(a) It is seen that the assessee has received interest of Rs.13,14,824. However, while claiming deduction u/s 80HHC, the assessee has not deducted 90% of the interest from the profits of the business thereby resulting in excess deduction of Rs.10,83,232 being allowed to the assessee with a tax effect of Rs.3,79,131.

(b) As per the recent amendments in the Income tax Act in respect of 80HHC deduction, I have reason to believe that the assessee has incorrectly claimed deduction u/s 80HHC on the DEPB credits resulting in under assessment of income.”

4. The Hon’ble Bombay High Court in the case of Hindustan Lever Ltd. vs. ACIT 268 ITR 332 held as follows :

“ Held, that the notice was clearly beyond the period of four years. The reasons recorded by the Assessing Officer nowhere stated that there was failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for that assessment year. Hence the Assessing Officer had no jurisdiction to reopen the assessment proceedings. The notice was not valid and was liable to be quashed. ”

Respectfully applying the same to the facts of the case, we uphold the order of the CIT(Appeals) wherein at page 4 it is held as follows :

“ From this fact it cannot be said that the income has escaped assessment due to failure of the appellant to disclose material facts necessary for making assessments. Keeping in view the judicial decisions cited by the appellant and also following the Hon’ble

Bombay High Court decision in the case of Bhor Industries Ltd. vs. ACIT (267 ITR 161) (Mum) re-assessment proceeding initiated by the A.O. beyond the period of 4 years from the end of the assessment year in question is bad in law and without jurisdiction and therefore invalid.”

5. In the result, the appeal of the Revenue is dismissed.

Order pronounced on this 24<sup>th</sup> day of February, 2010.

Sd/-  
(R.K. Gupta)  
Judicial Member.

Sd/-  
(J. Sudhakar Reddy)  
Accountant Member.

Mumbai,  
Dated : 24<sup>th</sup> February, 2010.

Wakode

Copy forwarded to :

1. Appellant.
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, A-Bench.

(True copy)

By Order

Asstt. Registrar,  
ITAT, Mumbai Benches, Mumbai.