

**IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH: MUMBAI**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND SHRI R.S. PADVEKAR, JUDICIAL MEMBER**

ITA No.5049/Mum/2011
(Assessment year: 2003-04)

M/s. Inventia Healthcare Pvt. Ltd.,
(Earlier known as M/s. Themis Laboratories P. Ltd.)
Unit No.4, Khira Indl. Estate,
ACIT -13(2),
477, Aayakar Bhavan,
M.K. Road,
Mumbai -400 020

..... Appellant

Vs

DCIT -9(2),
Mumbai

..... Respondent

PAN: **AABCT 5371 R**

Appellant by: Shri Anil J. Sathe
Respondent-revenue by: Shri Parasarth Naik
Date of Hearing: 08.05.2012
Date of Pronouncement: 25.05.2012

ORDER

PER R.S. PADVEKAR, JM:

In this appeal the assessee has challenged the impugned order of the Ld. CIT (A)-20, Mumbai dated 03.05.2011 for the A.Y. 2003-04. The assessee has taken the following grounds in the appeal:

- "1. The learned Commissioner of Income tax (Appeals) erred in fact and in law in rejecting the appellant's claim that the re-opening of the assessment u/s.147 was barred by limitation of time period and that the assessment order passed u/s.143(3) r.w.s. 147 was bad in law.*
- "2. The learned CIT (Appeals) failed to appreciate that the assessment was merely re-opened to disallow the claim of bad debts and web designing / patent*

expenses represent change of opinion which is not permitted u/s.147.

- “3. *The learned CIT (Appeals) erred in not fully allowing the claim of bad debts written-off and restricting the disallowance to the extent of ₹ 4,26,806/- without appreciating the provisions of section 36(1)(vii) and the judicial pronouncements cited by the appellant.*
- “4. *In the alternative and without prejudice to the above the learned CIT (Appeals) erred in not allowing the sum of ₹ 4,26,806/- as a business loss under section 28 of the Act.*
- “5. *The learned CIT (Appeals) erred in confirming the action of the assessing officer and treating the patent expenses of ₹ 5,97,151/- as capital expenditure.”*

2. The facts which revealed from the record are as under. The assessee is in the pharmaceutical preparations and formulations. The assessee filed the return of income for the A.Y. 2003-04 u/s.139 on 17.03.2003 declaring total income at ₹ 7,47,536/-. The assessment was completed u/s.143(3) vide order of assessment order dated 28.02.2006 determining total income at ₹ 14,44,090/-. Subsequently, the A.O. initiated the reassessment proceedings u/s.147 by issuing notice u/s.148 on 22.03.2010. The reason for reopening given by the A.O. is that on the perusal of the P&L A/c. it was seen that the assessee had debited a sum of ₹ 1,31,13,034/- on account of other expenses wherein bad debts written of ₹ 43,69,204/- were shown under the said head. The A.O. has also noted that the assessee has included web designing expenses of ₹ 1,60,000/- and patent expenses of ₹ 5,97,151/- which are capital in nature and are not allowable as deductible expenses. Only on above stated issues, the A.O. decided the issue the notice u/s.148. The action of the A.O. was resisted by the assessee by stating that there was no failure on the part of the

assessee to disclose any material fact and on merit also the assessee's case was covered by the decision of the Hon'ble Supreme Court in the case of TRF Ltd. vs. CIT-323 ITR 397(S.C.) as the assessee has actually written off the bad debts. The A.O. rejected the contention of the assessee and completed the re-assessment, re-determining the total income at ₹ 63,20,159/- by making the additions towards bad debts and web designing and patent expenses to the extent of ₹ 43,64,204/- and ₹ 5,11,863/- respectively. The assessee challenged the validity of the reopening before the Ld. CIT (A) but without success. Now, the assessee is in appeal before us.

3. We have heard the parties and perused the records. As per the facts on record, it is seen that the original assessment of the assessee has been completed u/s.143(3) of the Act vide order dated 28.02.2006. It is also seen that the A.O. issued notice u/s.148 after four years from the end of the relevant assessment year i.e. A.Y. 2003-04. The argument of the Ld. Counsel is that the assessee is protected by the proviso to sec. 147 of the Act. He submits that the proviso to sec.147 is not a mere formality but it put strict ceasers on the power of the A.O. to initiate proceedings u/s.147 and A. O. Can take recourse of the same only when there is a failure on the part of the assessee to disclose fully and truly all material facts at the time of the assessment. He submits that there is not even a whisper by the A.O. nor any allegation that there was the failure on the part of the assessee to disclose any material facts. Merely because the A.O. has different opinion that cannot be the ground for issuing notice u/s.147. The Ld. Counsel relied on the following decisions:

- i) CIT vs. Kelvinator of India -320 ITR 561 (SC)
- ii) Bhor Industries Ltd. vs. ACIT -267 ITR 161 (Bom)
- iii) Grindwell Norton Ltd. vs. ACIT-267 ITR 674

Per contra, the Ld. D.R. supports the action of the A.O. for issuing the notice u/s.148.

4. After hearing both the parties, in our opinion, the contention of the assessee has to be accepted. As per proviso to sec.147 of the Act,

if the original assessment of the assessee is completed u/s.143(3) of the Act and the proceedings u/s.147 to reopen completed assessment is to be done after the expiry of the four years from the end of the relevant assessment year then the scope of the A.O. to initiate the proceedings u/s.147 has been restricted by the Legislature by providing that there should be failure on the part of the assessee to disclose truly and fully all the material facts for completion of his assessment. We find that nowhere there is any allegation in the entire body of the assessment, even in the reasons for reopening which are recorded that the assessee failed to disclose any of material facts for completion of his original assessment. We further find that the action u/s.147 is initiated on the basis of the statement of account of the assessee i.e. P & L A/C , which was already on record when the original assessment was completed. The law is well settled by the decision of the Hon'ble Supreme Court in the case of Kelvinator of India (supra) that on 'mere change of the opinion', the reassessment proceedings cannot be initiated as admittedly while completing original assessment u/s.143(3) the subject matter of the reopening were already before the A.O. Moreover, as the reopening has been initiated after the expiry of the four years and as there is no allegation that there was any failure on the part of the assessee to disclose the material facts, the proviso to sec.147 protects the assessee. We have no option but to quash the reassessment proceedings by allowing ground no.1 & 2. As we have quashed the reassessment proceedings itself, we do not consider it necessary to go into the other grounds taken on merit.

5. In the result, assessee's appeal is allowed.

Order pronounced in the open court on this day of 25th May, 2012.

Sd/-
(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Sd/-
(R.S. PADVEKAR)
JUDICIAL MEMBER

Mumbai, Date: **25th May, 2012**

Copy to:

- 1) The Appellant.
- 2) The Respondent.
- 3) The CIT (A)-20, Mumbai.
- 4) The CIT -9, Mumbai.
- 5) The D.R. "I" Bench, Mumbai.

By Order

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Asstt. Registrar
I.T.A.T., Mumbai

*Chavan