

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "H", MUMBAI

Before Shri C N Prasad, Judicial Member &
Shri Rajesh Kumar, Accountant Member

ITA No.395/Mum/2016
Assessment Year : 2006-07

Kores International P Ltd., 301/302 Ashford Chambers, L J Road, Mahim (W), Mumbai 400 016.	Vs.	Asst. CIT Central Circle 41, Mumbai
PAN AAACK2399F (Appellant)		(Respondent)

Appellant By : Shri Mani Jain
Respondent By : Shri M C Omi Ningshen

Date of Hearing : 09.05.2018	Date of Pronouncement : 15.05.2018
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ORDER

Per Rajesh Kumar, Accountant Member

The aforesaid appeal has been filed by the assessee against the impugned order dated 17.12.2015, passed by the CIT(A)- 49, Mumbai, for the assessment year 2006-07.

2. The assessee has raised the following grounds of appeal:

1) On the fact and circumstances of the case and in law the Ld. CIT(A) erred in passing ex-parte order without providing an adequate opportunity of being heard despite the fact that an application for adjournment of hearing was filed on 19/12/2012 which was not refused by the Ld. CIT(A).

2. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in confirming the Ld. A.O.'s action in reopening the assessment u/s. 147 of the Income Tax Act, 1961

3. *On the facts and circumstances of the case an din law the Ld. CIT(A) erred in confirming the addition of Rs.1,17,769/- on account of alleged interest income.*

4. *The appellant crave leaves to add, amend, alter modify and or withdraw any of the above grounds of appeal, which are without prejudice to one another."*

3. At the outset, the learned counsel for the assessee did not press ground no.1, therefore, the same is dismissed as not being pressed.

4. Ground no.2 is against the confirmation of the action of the Assessing Officer in re-opening the assessment u/s. 147 r.w.s. 148 of the Income tax Act. Facts of the case in brief are that the assessment was completed u/s. 143(3) r.w.s. 153A of the Act vide order dated 22.12.2008, determining loss at Rs.43,16,600/- as against the returned loss of Rs.45,68,471/-. Subsequently, the case was re-opened by the Assessing Officer by recording the following reasons:

"On verification of records, it was observed that the assessee had debited an amount of Rs 7,21,234/- on account of rent paid. However, no TDS was deducted on this amount by the assessee. Therefore, there is under assessment of Rs 7,21,334/- which has resulted in short levy of tax of Rs 2,42,767/-

Assessee has credited Rs 15,26,135/- on account of interest income instead gross interest of Rs 16,43,904/- as reflected from TDS certificate furnished by the assessee. This has resulted in under assessment of Rs 1,17,769/- involving notional tax effect of Rs 39,641/- including surcharge and education cess.

In view of the above, I believe that the income has escaped assessment within the meaning of section 147."

Notice u/s. 148 was issued on 16.03.2011 and duly served on the assessee. In response to the said notice, the assessee filed its return of income on 27.04.2011, declaring total loss of Rs.45,68,471/- and, subsequently, the representative of the assessee attended the hearings from time to time

thereby submitting the details as called for. On perusal of 'Schedule J' of the balance sheet, the Assessing Officer observed that there was interest income of Rs.15,26,135/- whereas, from the TDS certificates it was found that the assessee has received interest from various concerns amounting to Rs.16,43,904/- and, thus, there is a difference of Rs.1,17,769/-, which had escaped assessment. Accordingly, the same was added to the income of the assessee and the loss was determined at Rs.41,98,830/- vide order dated 29.12.2011. In the appellate proceedings, the CIT(A) dismissed the appeal of the assessee on this technical issue by holding that there is new tangible material on the basis of which the Assessing Officer formed a belief regarding escapement of income and it is not a mere change of opinion.

5. The learned AR vehemently submitted before us that there was no new tangible material before the Assessing Officer to form a belief as to escapement of income. The learned AR while taking us through the order of the CIT(A) submitted that in para 3 thereof, the reasons recorded for re-opening the assessment and the observations reproduced by the CIT(A) in para 6.4 of the appellate order were exactly same as were raised before the Assessing Officer at the time of original assessment. The learned counsel submitted that the recording of reasons just on the basis of review is not a basis for re-opening/reassessment and, therefore, the same is bad in law. Alternatively, the learned AR submitted before us that the re-opening by the Assessing Officer is also a classical case of change of opinion as all the records as were referred to by the Assessing Officer and the reasons recorded as regards the TDS certificates were already placed before the Assessing Officer at the time of original scrutiny proceedings, which were examined and only after examination the assessment was framed. Therefore, this is just a case of change of opinion by the Assessing Officer, which is not permissible under the Act.

6. The learned DR, on the other hand, relied on the orders of the authorities below, especially the first appellate authority and submitted that the information from the audit party constitute new tangible material and, therefore, the case is rightly re-opened by the Assessing Officer. As regards the change of opinion, the learned DR submitted that the TDS Certificates were not filed by the assessee before the Assessing Officer at the time of original assessment proceedings and, therefore, there cannot be any question of change of opinion.

7. We have heard the rival parties and carefully perused the material including the decisions cited by the learned DR. We find that the case has been re-opened on the basis of objections by the revenue audit party, which has been reproduced by the Assessing Officer in the third para of the reasons recorded that income has escaped assessment to the tune of Rs.1,17,769/- involving tax effect of Rs.39,641/- i.e. the assessee has credited interest income of Rs.15,26,135/- instead of gross interest of Rs.16,43,904/- as reflected from TDS certificates furnished by the assessee. In our opinion, the material supplied by the audit party is a tangible material, which could be the basis of forming the reasons to believe as to the escapement of income chargeable to tax. But in the present case, the case of the stands on a different footing as we observed from the record before us, that the assessee had already filed the TDS certificates in the original assessment proceedings before the Assessing Officer and the Assessing Officer has mentioned in para 4 that the details of TDS was called for and in para 5 its clearly mentioned that after verification of computation of income the assessment is framed. We noted that in the statement of total income, the assessee has claimed the TDS on interest and the details of the same were filed with the Assessing Officer at the time of assessment proceedings. Further, in assessee's own case for A.Y. 2006-07 and 2007-08 in ITA Nos. 2512 & 2513/Mum/2014, the

co-ordinate Bench of this Tribunal has taken a similar view and the same is reproduced below:

"6. We have heard the rival submissions and perused the relevant materials on record including the impugned order and case laws relied upon by the rival parties. The undisputed facts are that the AO has reopened the assessment under Section 147 of the Act after recording reason to believe that three items of income have escaped assessment, which are extracted in para 3 above. A perusal of the reasons to believe reveals that the records on the basis of reasons for re-opening were recorded were available before the AO even at the time of original assessment proceedings as is apparent from the statement of computation of total income placed at page 1 of the paper book and also fortified by the discussions by the AO himself in the original assessment order passed under Section 143(3) r.w.s. 153A of the Act dated 22.12.2008 in paras 4, 6, 27 and 31 of the original assessment order, a copy of which is placed in the record at pages 3 to 18 of the paper book. Thus we find that the AO has recorded the reasons on re-examination of the same records/information which were available at the time of framing the original assessment passed under Section 143(3) r.w.s. 153A of the Act as referred to above. After examination of the facts in totality we are of the considered view that a review by the AO of his own order is not permissible under the Act as decided by the Hon'ble Supreme Court in the case of *Kelvinator of India Ltd. (supra)* and various other decisions. The decision relied upon by the Revenue in the case of *ACIT vs. Rajesh Jhaveri Stock Brokers Pvt. Ltd. (supra)* and *Raymond Woollen Mills Ltd. (supra)* do not come to the rescue of the Revenue as the same were distinguishable on facts and not applicable to the present case. In the case of *Rajesh Jhaveri Stock Brokers Pvt. Ltd.* the return was processed under Section 143(1) and no assessment was framed under Section 143(3) of the Act and the Hon'ble Apex Court has held that the failure to take steps under section 143(3) will not render the AO powerless to initiate reassessment proceedings. In the case of *Raymond Woollen Mills Ltd.* the facts were obtained by the Revenue from the subsequent year's assessment proceedings. In view of the above said discussion and the ratio laid down by the Hon'ble Apex Court in the case of *Kelvinator of India Ltd. (supra)* we are of the view that the reassessment proceedings were invalidly initiated and accordingly quashed. Since we have quashed the re-assessment proceedings, the issues raised on merits need no adjudication."

In view of the decision of the co-ordinate Bench and also the settled legal position by the Apex Court and various other judicial forums, we are of the view that the case of the assessee has wrongly been re-opened, which is beyond jurisdiction and not permissible as the same was done on the basis of same materials as was before the AO in the original assessment proceedings.

8. Since the assessee has succeeded on technical and legal issue , the other ground raised on merits is rendered academic and is not being adjudicated.

9. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on this day of 15th May 2018

Sd/-
(C N Prasad)
JUDICIAL MEMBER
Mumbai; Dated : 15th May 2018

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

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Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'H' Bench, ITAT, Mumbai

BY ORDER,

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai