

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA**

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri S.S. Viswanethra Ravi, Judicial Member)

**ITA No. 2291/Kol/2016
Assessment Year: 2006-07**

Deputy Commissioner of Income Tax, Circle-11(1), Kolkata.....Appellant

Vs.

M/s. Haldia Petrochemicals Ltd.....Respondent

**Bengal Eco Intelligent Park
(Techno) Tower-1, Block-EM
Plot No.3
Salt Lake City
Sector-V
3rd Floor
Kolkata -91
[PAN : AAACH 7360 R]**

Appearances by:

Shri H. Chakravorty, Sr. General Manager F & A, appeared on behalf of the assessee.

Shri C.J. Singh, Sr. D/R. appearing on behalf of the Revenue.

Date of concluding the hearing : October 29th, 2018

Date of pronouncing the order : November 9th, 2018

ORDER

Per J. Sudhakar Reddy, AM :-

This appeal filed by the revenue is directed against the order of the Learned Commissioner of Income Tax (Appeals)-4, Kolkata, (hereinafter the 'Ld. CIT(A)'), dt. 07/09/2016, passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Year 2006-07, on the following grounds:-

- "1. That on the fact and in the circumstances of the case CIT(A) erred in quashing the order of the Assessing Officer by holding that the re-opening beyond 4 years was irregular.*
- 2. That on the fact and in the circumstances of the case CIT(A) erred in holding the re-opening on the basis of audit objection to be invalid.*
- 3. That the appellant craves leave to add, alter/or amend any of the grounds of appeal during the course of hearing."*

2. After hearing rival contentions, we find that the ld. CIT(A) at para 4.3. of his order, held as follows:-

“4.3. I have considered the assessment order as well as the written submissions filed by the AR of the appellant. I find that the primary issue in this case is relating to validity of issue of notice issued u/s 148 of the Act. I find that in the instant case the scrutiny assessment u/s 143(3) was made on 30/12/08. Therefore, there is no doubt that the proviso to Section 147 is applicable in the instant case. The said proviso restrains the AO to initiate 147 where assessment under section 143(3) has taken place. Reassessment after a period of four years from the end of the relevant assessment year can only be made when there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for the assessment. I find that in the instant case notice u/s 148 was issued on 01.03.2013 which is clearly more than 4 years from the end of the relevant assessment year. From the copy of the reasons recorded it is noted that in the instant case there is no new set of facts. The reassessment is sought to be done only on the basis of a change in opinion on the same set of facts. I find that this issue is squarely covered in favor of the assessee and against the revenue by the judgement of Hon'ble Apex court in the case of CIT vs Kelvinator India Ltd reported in 310 ITR 561. It was held that 147 proceedings cannot be initiated merely on change of opinion. Further, reason to believe of the AO is founded on an information which might have been received by the AO after the completion of the assessment in which case the reopening may be on sound foundation. I further find that where regular order of assessment is passed in terms of 143(3), to initiate proceedings u/s 147 it is a pre-requisite of the Act that there has to be a failure on the part of the assessee to disclose fully and truly all material facts. In the instant case I do not find any such finding by the AO. In fact, I find from the reasons recorded that reopening has been done on an audit query. In view of the above factual and legal position re-opening is held to be barred by limitation as it is done clearly beyond the period of four years from the end of the relevant assessment year. Hence, re-opening is quashed. These grounds are allowed. Since the reassessment proceeding is quashed, I am not going into merits of the case and accordingly the appeal of the assessee is allowed.”

3. The ld. D/R, could not point out any infirmity in these findings. There is no new material based on which the Assessing Officer has confirmed the information that income subject to tax has escaped assessment. There is no whisper in the reasons recorded that there was failure on part of the assessee to truly and fully disclose all the material facts required for assessment. When there is no such mention, the Hon'ble Delhi High Court in the case of *M/s. Haryana Archylic Manufacturing Company vs. CIT; 308 ITR 38*, has held to be the re-opening to be bad in law.

3.1. In view of the above discussion, we uphold the order of the Id. First Appellate Authority and dismiss this appeal of the revenue.

4. In the result, appeal of the revenue is dismissed.

Kolkata, the 9th day of November, 2018.

Sd/-

[S.S. Viswanethra Ravi]

Judicial Member

Dated : 09.11.2018

{SC SPS}

Sd/-

[J. Sudhakar Reddy]

Accountant Member

Copy of the order forwarded to:

1. ***M/s. Haldia Petrochemicals Ltd
Bengal Eco Intelligent Park
(Techno) Tower-1, Block-EM
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3rd Floor
Kolkata -91***

2. ***Deputy Commissioner of Income Tax, Circle-11(1), Kolkata***

3. CIT(A)-

4. CIT- ,

5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches