IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH: KOLKATA

Before: **Shri J. Sudhakar Reddy, Accountant Member and**
Shri S.S. Viswanethra Ravi, Judicial Member

I.T.A No.2450/Kol/2017
(Assessment Year: 2006-07)

Haldia Riverside Estates Limited Appellant
[PAN:AAACH7645B]

Vs

DCIT, Circle-7(1), Kolkata Respondent

For the Appellant : Shri H. Chakraborty, Advocate
For the Respondent : Shri Robin Choudhury, ACIT, Sr.DR

Date of hearing : 12.02.2019
Date of pronouncement : 03.05.2019

ORDER

PER Shri S.S. Viswanethra Ravi, JM:

This appeal by the assessee against the order dated 03.10.2017 passed by the Commissioner of Income Tax (Appeals)-3, Kolkata ['CIT(A)'] for Assessment Year 2006-07.

2. The ld. AR submits that the assessee challenged the validity of assessment made u/s 147 of the Act in Ground No.1 and prayed to take up the same as preliminary issue. With the consent of both the parties, we proceeded to hear the Ground No.1 raised by the assessee as preliminary issue.

3. Heard both the parties and perused the materials available on record. The contention of the ld. AR is that the Assessing Officer failed to bring on record any new tangible material for reopening of

assessment already concluded u/s 143(3) of the Act. The ld. AR referred to Page Nos.64 & 65 of the Paper Book and argued that without bringing on record any new material to show that the income escaped assessment for reopening the concluded assessment. On perusal of the reasons recorded by the Assessing Officer which is placed at Page No.64, it is observed that the Assessing Officer did not mention any new material that came to his notice to reopen the assessment. As it appears that the Assessing Officer examined the record which was already before him in the assessment proceedings. In our opinion, such reopening is not maintainable as it constitutes change of opinion.

4. Further, it is observed from the notice issued by the Assessing Officer u/s 142(1) of the Act placed at page no.19 of paper book wherein he specifically asked for the details of rental income/other receipt for various services from various parties showing opening balances/payments received/payments made and balance payable or receivable for the relevant parties. In response to the said notice, the assessee vide its letter dated 12.12.13 placed at page no.20 of paper book submitted all the details as sought by the Assessing Officer vide its question no.2 and therefore it appears from the record that the Assessing Officer required details of an issue in the reopening proceedings and the details of which already on record and the assessee in response to the statutory notice, submitted all the details before the Assessing Officer in the original assessment, so therefore, he changed the opinion already arrived by him by examining the record existing before him. So, therefore the change of opinion for reopening of assessment proceedings is not maintainable as rightly placed by the ld. AR relying on the judgment in the case of CIT vs. M/s. Kelvinator India Limited in Civil Appeal No.2520 of 2008 of

Hon'ble Supreme Court. The relevant portion of this judgment is reproduced hereinbelow for better understanding:

> "On going through the changes, quoted above, made to Section 147 of the Act, we find that, prior to Direct Tax Laws (Amendment) Act, 1987, re-opening could be done under above two conditions and fulfillment of the said conditions alone conferred jurisdiction on the Assessing Officer to make a back assessment, but in section 147 of the Act [with effect from 1st April, 1989], they are given a go-by and only one condition has remained, viz., that where the Assessing Officer has reason to believe that income has escaped assessment, confers jurisdiction to re-open the assessment. Therefore, post-1st April, 1989, power to re-open is much wider. However, one needs to give a schematic interpretation to the words "reason to believe" failing which, we are afraid, Section 147 would give arbitrary powers to the Assessing Officer to re-open assessments on the basis of "mere change of opinion", which cannot be per se reason to re-open. We must also keep in mind the conceptual difference between power to review and power to reassess. The Assessing Officer has no power to review; he has the power to re-assess. But reassessment has to be based on fulfillment of certain pre-condition and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, Assessing Officer has power to re-open, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief.
>
> Our view gets support from the changes made to Section 147 of the Act, as quoted hereinabove. Under the Direct Tax Laws (Amendment) Act, 1987, Parliament not only deleted the words "reason to believe" but also inserted the word "opinion" in Section 147 of the Act. However, on receipt of representations from the Companies against omission of the words "reason to believe", Parliament re-introduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer. We quote here in below the relevant portion of Circular No.549 dated 31st October, 1989, which reads as follows:
>
> "7.2 Amendment made by the Amending Act, 1989, to reintroduce the expression `reason to believe' in Section 147.
>
> --A number of representations were received against the omission of the words `reason to believe' from Section 147 and their substitution by the `opinion' of the Assessing Officer. It was pointed out that the meaning of the expression, `reason to believe' had been explained in a number of court rulings in the past and was well settled and its omission from section 147 would give arbitrary

> powers to the Assessing Officer to reopen past assessments on mere change of opinion. To allay these fears, the Amending Act, 1989, has again amended section 147 to reintroduce the expression `has reason to believe' in place of the words `for reasons to be recorded by him in writing, is of the opinion'. Other provisions of the new section 147, however, remain the same."

4. In view of the ratio laid down by the Hon'ble Supreme Court in the aforementioned paragraphs and the issue raised in Ground No.1 is answered in favour of the assessee and it is allowed.

5. Ground No.2 is challenging the action of CIT(A) in confirming the addition made by the Assessing Officer in the facts and circumstances of the case. WE find that this issue is raised on merits wherein in the aforementioned paragraphs, we have taken a view that the assessment completed u/s 147 of the Act is invalid. So, therefore the issued raised in Ground No.2 becomes academic and is dismissed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 03.05.2019.

Sd/- **[J. Sudhakar Reddy]** **Accountant Member**	**Sd/-** **[S.S. Viswanethra Ravi]** **Judicial Member**

Dated : 03.05.2019
Place : Kolkata
RS, Sr.PS

Copy of the order forwarded to:

1. Appellant –Haldia Riverside Estates Limited, Bengal Eco Intelligent Park(Techna), Tower-1, Block EM, Plot No.3, Sector-V, Salt Lake, Paraganas North, Kolkata -700091.
2. Respondent –DCIT, Circle7(1), Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

//True Copy// By order,

Assistant Registrar,
ITAT, Kolkata