

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "E": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA.No.710/Del./2017  
Assessment Year 2006-2007

|                                         |      |                                                                                                       |
|-----------------------------------------|------|-------------------------------------------------------------------------------------------------------|
| The DCIT, Central Circle-II,<br>Gurgaon | vs., | M/s. Orient Craft Ltd., F-8,<br>Okhal Industrial Area,<br>Phase-I, New Delhi – 020.<br>PAN AAACO0068M |
| (Appellant)                             |      | (Respondent)                                                                                          |

|                |                                                                       |
|----------------|-----------------------------------------------------------------------|
| For Revenue :  | Ms. Pramita M. Biswas. CIT-DR                                         |
| For Assessee : | Shri Salil Aggarwal, Advocate<br>And<br>Shri Shailesh Gupta, Advocate |

|                         |            |
|-------------------------|------------|
| Date of Hearing :       | 20.02.2020 |
| Date of Pronouncement : | 25.02.2020 |

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Revenue has been directed against the Order of the Ld. CIT(A)-7, New Delhi, Dated 07.11.2016, for the A.Y. 2006-2007, challenging the Order of the Ld. CIT(A) in quashing the re-assessment proceedings under section 147 of the I.T. Act, 1961.

2. Briefly the facts of the case are that return of income was filed by assessee on 30.11.2006 declaring income of Rs.20.49 crores. The assessment was completed under section 143(3) of the I.T. Act, 1961, on 22.12.2008 at an income of Rs.21.19 crores. Subsequently, the case was reopened under section 147 of the I.T. Act by issuing notice under section 148 of the I.T. Act, 1961, Dated 18.03.2013 and A.O. completed the re-assessment under section 147/143(3) of the I.T. Act, 1961, vide Order Dated 31.03.2014 assessing the income of assessee at Rs.33,12,63,750/- after making additions/disallowances on 04 Heads in a sum of Rs.11,93,40,460/-.

3. The assessee challenged the reopening of the assessment as well as addition on merits before the Ld. CIT(A). It was submitted that assessee-company has disclosed all the material facts truly and fully at the original assessment stage which have been considered by the A.O. Therefore, it is a case of mere change of opinion. No new material have been considered by the A.O. The assessee relied upon Judgment of the Hon'ble Supreme Court in the

case of Kelvinator of India Ltd., 228 CTR 488. It was also submitted that A.O. has not disposed of objections filed by the assessee against the reopening of the assessment.

4. The Ld. CIT(A) found the contention of assessee to be correct. The assessee filed objections to the re-assessment proceedings. The Ld. CIT(A) found that the objections raised by the assessee against the re-assessment proceedings have not been dealt with and disposed of by the A.O. It was further noted that A.O. has issued detailed questionnaire in original assessment proceedings wherein all the items referred to the A.O. in the re-assessment order and reasons i.e., product development expenses, sales support services, bonus and gratuity were examined by the A.O. The A.O. has not disputed this fact, but, merely stated that there is no change of opinion in the present case because no opinion was ever originally found. The objections of the assessee was summarily rejected. The assessee disclosed all material facts necessary for the assessment at original assessment stage and there were no failure on the part of assessee to disclose full and true

disclosure of the material facts. The re-assessment have been done after four years from the end of the relevant assessment year. Therefore, reopening of the assessment cannot be sustained in Law being mere change of opinion. Ld. CIT(A), accordingly, quashed the reopening of the assessment.

5. The Ld. D.R. relied upon the Order of the A.O.

5.1. On the other hand, Learned Counsel for the Assessee reiterated the submissions made before the authorities below.

6. We have considered the rival submissions and perused the findings of the authorities below. It is not in dispute that original assessment order was framed under section 147/143(3) of the I.T. Act, 1961. It is also not in dispute that notice under section 148 was issued on 18.03.2013 i.e., after four years from the end of the relevant assessment year. The A.O. made four additions in the re-assessment order i.e., product development expenses, disallowance under section 10B, disallowance of excess

claim of bonus and gratuity. The reasons for reopening of the assessment are reproduced in the re-assessment order in which the A.O. has specifically mentioned that there is an under assessment of income under all the four heads in which the additions have been made. The A.O. has not brought any tangible material on record at the time of reopening of the assessment. The A.O. merely on perusal of assessment record reopened the assessment because there is an under assessment on all these four heads at the time of passing of the original assessment order. Thus, the A.O. wanted to correct the error in the original assessment passed by the A.O. The Hon'ble Bombay High Court in the case of Titanor Components Ltd., 343 ITR 183 held that "*re-assessment to correct an error in assessment, re-assessment is not valid.*" The Hon'ble Rajasthan High Court in the case of Vardhaman Industries 363 ITR 625 held that "*reasons must be based on new and tangible material. Notice based on documents already on record to re-assessment not valid.*" The Ld. CIT(A) has given specific finding that assessee produced complete records on all these items and A.O.

examined the issues at the original assessment stage, therefore, it is a case of mere change of opinion without bringing any material on record, particularly when re-assessment is initiated after four years from the end of the relevant assessment year. Therefore, there is no infirmity in the Order of the Ld. CIT(A) in quashing the re-assessment proceedings. Appeal of the Department is dismissed.

7. In the result, appeal of the Department dismissed.

Order pronounced in the open Court.

Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 25<sup>th</sup> February, 2020

VBP/-

Copy to

|    |                     |
|----|---------------------|
| 1. | The appellant       |
| 2. | The respondent      |
| 3. | CIT(A) concerned    |
| 4. | CIT concerned       |
| 5. | D.R. ITAT "E" Bench |
| 6. | Guard File          |

// BY Order //

Asst. Registrar : ITAT Delhi Benches : Delhi.