

आयकर अपीलिय अधिकरण, हैदराबाद पीठ में  
IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCHES "B", HYDERABAD

BEFORE  
SHRI RAMA KANTA PANDA, ACCOUNTANT MEMBER  
&  
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 1589/Hyd/2018  
(निर्धारण वर्ष / Assessment Year: 2011-12)

Biological E Limited,  
Hyderabad  
[PAN No. AAACB7873P]

Vs. Deputy Commissioner of  
Income Tax,  
Cicle-1(2),  
Hyderabad

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri V.Siva Kumar, AR  
राजस्व द्वारा/Revenue by: Shri Kumar Aditya, DR

सुनवाई की तारीख/Date of hearing: 28/06/2022  
घोषणा की तारीख/Pronouncement on: 22/07/2022

आदेश / ORDER

**PER K. NARASIMHA CHARY, JM:**

Aggrieved by the order dated 29/05/2018, passed by the Learned Commissioner of Income Tax (Appeals)-1, Hyderabad ("Ld. CIT(A)") in the case of M/s.Biological E Limited ("the assessee") for the AY.2011-12, assessee filed this appeal.

2. Brief facts of the case are that the assessee is engaged in the business of sale of formulations and bulk drugs. They have filed their return of income for the assessment year 2011-12 on 30/09/2011 declaring a loss of Rs. 8,41,37,950/-, which they revised on 31/03/2013 substituting the loss at Rs. 8,84,25,258/- under the normal provisions of the Income Tax Act, 1961 (for short "the Act") and book profit of Rs. 17,31,47,281/- as book profit under 115 JB of the Act. Income of the assessee was determined at a total loss of Rs. 7,74,06,376/- by the assessing officer by order dated 07/03/2014 passed under section 143(3) of the Act. Subsequently by issuing notice under section 148 and 142 (1) of the Act the learned Assessing Officer proposed to reopen the assessment under section 147 of the Act. Assessee by letter dated 18/04/2016 stated that the original return of income that was filed on 31/03/2013 may be considered as the return submitted pursuant to the notice under section 148 of the Act. Assessee further requested the learned Assessing Officer to provide the reasons for reopening the assessment under section 147 of the Act.

3. Learned Assessing Officer issued letter dated 19/05/2016 stating that it was seen from the accounts that the assessee made investment to the tune of Rs. 1,57,69,399/- on which they have earned exempt income of Rs. 8,71,398/- in the form of dividend whereas they have shown to have paid interest of Rs. 22,44,71,790/- and, therefore, the assessee was called upon to explain why the disallowance under section 14A of the Act read with Rule 8D of the Rules shall not be made. This letter dated 19/05/2016 appears to have been issued in section 142(1) read with section 148 of the

Act. According to the learned Assessing Officer, however, this letter dated 19/05/2016 itself contains the reasons.

4. By order dated 30/12/2016 passed under section 143(3) read with section 147 of the Act, learned Assessing Officer made an addition of Rs. 14,05,809/- by invoking section 14A of the Act read with Rule 8D of the Rules. Aggrieved by the same, assessee preferred an appeal before the Ld. CIT(A) on several grounds including the challenge to assumption of jurisdiction under section 147 of the Act by the learned Assessing Officer. Assessee also pleaded the non-furnishing of reasons by the learned Assessing Officer, to which the learned Assessing Officer relied upon the letter dated 19/05/2016 to state that the reason for the reopening was made known to the assessee by way of this letter and, therefore, there is substantial compliance on that score.

5. Ld. CIT(A) on a consideration of the material before him reached a conclusion that the learned Assessing Officer had communicated the reasons for reopening of the case. Insofar as the merits are concerned, Ld. CIT(A) was of the opinion that the learned Assessing Officer had rightly applied section 14A of the Act and the addition of Rs. 14, 05,809/- is properly made. Ld. CIT(A) accordingly dismissed the appeal.

6. Assessee is therefore, in this appeal before us stating that the issue of notice under section 148 of the Act for verification of allowance of expenditure is impermissible under law and the learned Assessing Officer cannot assume any jurisdiction to complete the reassessment without furnishing the reasons in their proper form, instead of making the assessee to search for the same in the notice issued under section 142(1) of the Act.

Ld. AR also argued that it was not to the notice of the Ld. CIT(A) that the assessee had its own funds for the respective years to make the investment and therefore, no disallowance is called for. Assessee also drew our attention to paragraph No. 6.2 of the impugned order on this aspect.

7. Per contra, it is the submission on behalf of the Revenue that the law does not prescribe any particular form to communicate the reasons for reopening of an assessment and as a matter of fact such a requirement is not coming out of any provisions of the Act, but it is only in compliance with the principles of natural justice such a requirement has come and, therefore, it is suffice that the assessee is notified the reasons in whatever may be the form. Inasmuch as the letter dated 19/05/2016 gives the clear indication as to the purpose for which the reopening is sought, there is substantial compliance with this requirement and the assessee cannot have any complaint against. Ld. DR further pleaded that even if we believe that the assessee has got its own funds in the respective financial years, still the assessee has to disallow some amount towards administrative expenses contemplated under rule 8D (2) (iii) of the Rules.

8. We have gone through the record in the light of the submissions made on either side. It is an admitted fact that the original assessment was done by order dated 07/03/2014 determining the total loss at Rs. 7,74,06,376/-. Assessment order dated 30/12/2016 passed under section 143(3) read with section 147 of the Act reads the cause of action for proposing to reopen the concluded assessment was to verify the allowability of expenditure on investment from which the dividend was earned during the year. Even the so-called reasons furnished to the

assessee by way of letter dated 19/05/2016 also read that the accounts of the assessee reveal that the assessee made investment to the tune of Rs. 1,57,69,399/- on which the assessee earned exempt income of Rs. 8,71,398/- in the form of dividend and since the assessee paid the interest of Rs. 22,44,71,790/- on loans the disallowance under section 14A of the Act was necessary.

9. It is, therefore, clear that no new fact has come to the notice of the learned Assessing Officer for proposing to reopen the concluded assessment. It's not the case of the learned Assessing Officer that subsequent to the original assessment, the learned Assessing Officer came to the possession of any new material. It's not the case of the learned Assessing Officer that the books of accounts on a perusal of which the learned Assessing Officer noticed the investment and earning of dividend by the assessee. Such a material was in possession of the learned Assessing Officer when the original assessment was made. The question is, whether in the circumstances, the reopening of assessment is permissible.

10. The decision of the Hon'ble Apex Court in the case of CIT Vs. Kelvinator of India Ltd. (2010) 187 Taxman 312 (SC) clinches the issue. In that the decision, the Hon'ble Apex Court held that one needs to give a schematic interpretation to the words "reason to believe", failing which section 147 would give arbitrary powers to the learned Assessing Officer to reopen assessment on the basis of 'mere change of opinion', which cannot be per se reason to reopen; that one must also keep in mind the conceptual difference between power to review and power to assess; that the learned Assessing Officer has no power to review, he has the power to reassess, but the re-assessment has to be based on fulfilment of certain

preconditions and if the concept of 'change of opinion' is removed, then in the garb of reopening the assessment, review would take place; that one must to treat the concept of 'change of opinion' as an inbuilt test to check abuse of power by the learned Assessing Officer; and that after 01/04/1989 the learned Assessing Officer has power to reopen, provided there is 'tangible material' to come to conclusion that there is escapement of income from assessment.

11. It is, therefore, clear that the learned Assessing Officer has power to reopen provided there is 'tangible material' to come to conclusion that there is escapement of income from the assessment. Otherwise it would amount to 'change of opinion' and does not permit the learned Assessing Officer to reopen the concluded assessment. This is more particularly after 01/04/1989. In this case, admittedly there is no new material, and for that matter no new fact, has come to the notice of the learned Assessing Officer subsequent to the conclusion of the assessment under section 143(3) of the Act. The learned Assessing Officer re-visited the books of accounts that are already available with him at the time of the original assessment to verify the allowability of expenditure on investment from which the dividend income was earned during the year. It is, therefore, a clear case of review of the assessment that had already been done basing on the change of opinion, but not a case of 'reason to believe' that there is escapement of income. This course is clearly not approved by the Hon'ble Apex Court in the case of Kelvinator of India Ltd. (supra). On this score itself the reassessment is not maintainable and same is liable to be quashed. Recording the same, we quash the re-assessment.

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

Order pronounced in the open court on this the 22<sup>nd</sup> day of July,  
2022

Sd/-  
**(RAMA KANTA PANDA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(K. NARASIMHA CHARY)**  
**JUDICIAL MEMBER**

*TNMM*

Hyderabad,  
Dated: 22/07/2022

Copy forwarded to:

1. Biological E Limited, 18/1 & 3, Ram Nagar Road, Azamabad, Hyderabad.
2. Deputy Commissioner of Income Tax, Circle-1(2), Hyderabad.
3. CIT(A)-1, Hyderabad.
4. Pr.CIT-1, Hyderabad.
5. DR, ITAT, Hyderabad.
6. GUARD FILE

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ASSISTANT REGISTRAR  
ITAT, HYDERABAD