

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI
श्री एस.एस. विश्वनेत्र रवि, न्यायिक सदस्य एवं श्री एस.आर. रगुनाथा, लेखा सदस्य के समक्ष
Before Shri S.S. Viswanethra Ravi, Judicial Member &
Shri S.R. Raghunatha, Accountant Member

आयकर अपील सं./I.T.A. No.1692/Chny/2024

निर्धारण वर्ष/Assessment Year: 2017-18

&

C.O. No. 63/Chny/2024 [in I.T.A. No. 1692/Chny/2024]

The Assistant Commissioner of
Income Tax,
Corporate Circle 11,
Chennai.

Vs. Capital First Limited (Merged with
IDFC Bank Limited), KPM Tower,
7th Floor, No. 1, Harrington Road,
Chetpet, Chennai 600 031.

[PAN:AACCK6863C]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent/Cross Objector)

Department by : Shri M. Rajan, CIT

Assessee by : Shri Ketan K. Ved, C.A.

सुनवाई की तारीख/ Date of hearing : 23.10.2024

घोषणा की तारीख /Date of Pronouncement : 29.10.2024

आदेश /O R D E R

PER S.S. VISWANETHRA RAVI, JUDICIAL MEMBER:

This appeal filed by the Revenue is directed against the order dated 14.03.2024 passed by the Id. Commissioner of Income Tax, National Faceless Appeal Centre [NFAC], Delhi for the assessment year 2017-18.

2. Since, the issues raised in the Revenue's appeal and the Cross Objections of the assessee are similar and based on the same identical facts, with the consent of both the parties, we proceed to hear the appeal

and Cross Objections together and pass consolidated order for the sake of convenience.

3. We find that this appeal was filed with a delay of 24 days. The Appellant-Revenue filed an affidavit stating reasons for the said delay. On perusal of the same, we find that the reasons stated by the Revenue are bonafide, which really prevented in filing the appeal in time. Thus, the delay of 24 days is condoned.

4. First, we shall take up Revenue's appeal in I.T.A. No. 1692/Chny/2024 for the assessment year 2017-18 for adjudication.

5. The Appellant-Revenue has raised 4 grounds of appeal amongst which the only issue emanates for our consideration is as to whether the Id. CIT(A) justified in holding that the reopening of assessment as invalid in the facts and circumstances of the case.

6. Brief facts emanating from the record are that the assessee filed revised return of income on 30.03.2019 declaring total income at ₹.316,28,67,190/- under normal provision of the Income Tax Act, 1961 ["Act" in short] and ₹.80,69,72,053/- under section 115JB of the Act. The Assessing Officer completed scrutiny assessment under section 143(3) of the Act on 16.12.2019 determining total income of the assessee at

₹.317,23,71,399/- under normal provisions of the Act and ₹.81,86,76,258/- under section 115JB of the Act. The said assessment was reopened by issuing notice dated 27.03.2021 under section 148 of the Act for the reasons which are reproduced in para 2 and 3 of the assessment order. The assessee filed its reply in response to reassessment notice, but, however, the Assessing Officer made addition on account of non-convertible debenture and ESOP expenditure. Before the Id. CIT(A), the assessee challenged reopening of assessment and assessment made thereon under section 147 of the Act as bad in law. The Id. CIT(A) considered the submissions of the assessee and held that the reassessment is invalid on the ground that the reopening of the case without any new information received by the Assessing Officer between the original assessment and the issuance of the reopening notice is invalid.

7. The Id. DR Shri M. Rajan, CIT submits that the Assessing Officer rightly reopened the assessment, as having fresh material. It was contended that the reopening was done as per law and that the Assessing Officer had reasons to believe and had rightly assumed jurisdiction over the case by recording reasons for reopening.

8. The Id. AR Shri Ketan Ved, C.A placing on record, the orders of this Tribunal in I.T.A. No. 18/Chny/2024 dated 24.07.2024 and in I.T.A. No. 819/Chny/2024 dated 04.09.2024 for the assessment years 2008-09 and 2016-17, submitted that on similar identical facts, the Tribunal held the reopening is bad under law by placing reliance on the decision of the Hon'ble Supreme Court in the case of CIT v. Kelvinator of India Limited [2010] 320 ITR 561 (SC).

9. After hearing both the parties and on perusal of the reassessment order, we note that the Assessing Officer proceeded to make disallowance towards interest accrued but not paid on Non-convertible Debenture as well as expenses claimed on account of ESOP only on examination of computation of statement, which was already there on record during the course of original assessment proceedings as it is clear from para 2 of the assessment order, which was also reproduced at pages 5 to 7 of the impugned order. Further, we find from the observations of the Id. CIT(A) at para 4.3.2 of the impugned order that the reopening of the case without any new information received by the Assessing Officer between the original assessment and the issuing of the reopening notice as not valid, in our opinion, the Id. CIT(A) correctly held the same. While considering similar issue for the assessment year 2016-

17 in assessee's own case, the Tribunal observed that the appellant-Revenue reopened the assessment for AY 2016-17 on the same reasons as that of the assessment year 2008-09, which are similar in the present reassessment order. In that case, the Tribunal held that the order of the Id. CIT(A) is correct in holding that the case of the assessee which fall under "change of opinion". The relevant portion in the order for AY 2008-09 at para 8 and 9 are reproduced herein below for better understanding:

8. *We have heard the rival contentions, and perused the materials available on record. The A.O has allowed the claim u/s. 36(1)(vii)(c) of the Act after due verification. The assessee in response to notice u/s. 142(1) of the Act has submitted before the A.O the details of provisions and contingency of Rs.57,43,00,000/- mentioned in the detailed notes and claim of interest on debenture u/s. 36(1)(viii) of the Act. The Tribunal in the assessee's own case has held that the provisions against standard assets are allowable u/s. 36(1)(vii)(c) of the Act and interest on debenture allowable u/s. 36(1)(viii) of the Act. Therefore, the A.O has disallowed the claim after due verification. The Hon'ble Apex Court while confirming the decision of Hon'ble Delhi High Court in the case of CIT vs. Kelvinator of India has observed as under:*

"....., we find that, prior to the Direct Tax Laws (Amendment) Act, 1987, reopening could be done under the above two conditions and fulfilment 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 reopen the assessment. Therefore, post-1st April, 1989, power to reopen 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 reopen assessments on the basis of "mere change of opinion", which cannot be per se reason to reopen.

7. *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 reassess. But reassessment has to be based on fulfilment of certain preconditions and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening 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, the Assessing Officer has power to reopen, 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 17 ITA no.4033/Del./2011 "reason to believe", Parliament reintroduced the said expression and deleted the word "opinion" on the ground that it would vest arbitrary powers in the Assessing Officer.

8. *We quote hereinbelow the relevant portion of Circular No. 549 dated October 31, 1989 ([1990] 182 ITR (St.) 1, 29), 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."

9. *We, therefore concur with the findings of the Ld. CIT(A) that this is a case of change in opinion, which is permissible as per law. In view of the above, the appeal filed by the Revenue is dismissed.*

10. In view of the above, considering identical facts and circumstances of the case, which are similar to the facts in assessee's own case for AY 2008-09 as well as AY 2016-17, wherein, the Tribunal has confirmed the order of the Id. CIT(A) in holding that the reassessment is invalid on account of "change of opinion". Since, we find that the facts and circumstances of the case for the assessment year under consideration are similar to the facts in assessee's own case for earlier assessment years, we find no reason to interfere with the order of the Id. CIT(A) for

assessment year under consideration, and thus, the ground raised by the Revenue fails and it is dismissed.

C.O. No. 63/Chny/2024

11. In view of our decision in Revenue's appeal, wherein, we confirmed the order of the Id. CIT(A) in holding the reassessment order dated 31.03.2022 is bad in law, consequently, the Cross Objection arising out of the said Revenue's appeal in ITA No. 1692/Chny/2024 becomes academic and dismissed accordingly.

12. In the result, both the appeal filed by the Revenue and the Cross Objections filed by the assessee are dismissed

Order pronounced on 29th October, 2024 at Chennai.

Sd/-
(S.R. RAGHUNATHA)
ACCOUNTANT MEMBER

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Chennai, Dated, 29.10.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant,
2. प्रत्यर्थी/ Respondent,
3. आयकर आयुक्त/CIT, Chennai/Madurai/Coimbatore/Salem
4. विभागीय प्रतिनिधि/DR &
5. गार्ड फाईल/GF.