

**आयकर अपीलीय अधिकरण, कोलकाता पीठ, कोलकाता**

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA**

**Before Shri Rajesh Kumar, Accountant Member and Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No.1137/Kol/2023**

Assessment Year: 2014-15

**DCIT, Circle-3(2), Gangtok.....Appellant**

**vs.**

**Heinz India Pvt. Ltd.....Respondent**

**Plot No.26,27,28,30, 37**

**Mamring Power House,**

**Mamring Block Namthang,**

**South Sikkim Namchi,**

**Sikkim – 737132.**

**[PAN: AAACH0667B]**

**C.O. No.16/Kol/2024**

**(A/o I.T.A. No.1137/Kol/2023)**

Assessment Year: 2014-15

**Zydus Wellness Products Ltd.**

**(successor of Heinz India Pvt. Ltd.) .....Cross-Objector**

**Plot No.26,27,28,30, 37**

**Zydus Corporate Park, Scheme No.63,**

**Survey No.536, Khoraj (Gandhinagar),**

**Nr. Vaishnodevi Circle, S.G. Highway,**

**Ahmedabad-382481.**

**[PAN: AABCZ3366L]**

**vs.**

**DCIT, Circle-3(2), Gangtok.....Respondent**

**Appearances by:**

Shri Nikhil Tiwari, CA & M. Shah, CA, appeared on behalf of the assessee.

Shri Pradip Kr. Biswas, Addl. CIT, appeared on behalf of the Respondent.

Date of concluding the hearing : November 21, 2024

Date of pronouncing the order : November 25, 2024

**ORDER**

**Per Sonjoy Sarma, Judicial Member:**

The captioned appeal filed by the revenue and the corresponding cross-objection filed by the assessee against the order dated 29.08.2023 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act') for assessment year 2014-15.

2. The brief facts of the case are that the assessee is engaged in the business of beverages and instant food product. The return of income for the assessment year 2014-15 was filed on 30.11.2024 by declaring total income of Rs.76,31,69,300/-. The return was assessed u/s 143(3) r.w.s 144C(3) of the Act dated 13.02.2018 determining total income at Rs.131,37,70,160/-. The addition included transfer pricing adjustment of Rs.48,44,14,000/-, disallowance of weighted deduction u/s 35(2AB) & 35(2) of Rs.4,59,51,713/-, disallowance of ESOP/RSU of Rs.1,23,58,072/- and restriction or deduction claimed u/s 80IC to Rs.102,02,10,934/- as against claim of Rs.102,80,88,016/-. While initiating the reassessment proceedings, it was noticed that the assessee has been allowed deduction u/s 80IC on VAT credit of Rs.377.97 lakhs pertaining to earlier years credited in P & L A/c for the year. However, the said VAT credit cannot be considered to be derived from the eligible business activity as provided u/s 80IC of the Act. Accordingly, the Assessing Officer issued notice for reopening u/s 148 of the Act followed by notice u/s 143(2) and 142(1) of the Act and he disallowed VAT credit of Rs.3,77,97,000/- deemed as the credit belongs to earlier years and disallowed the same.

3. Aggrieved by the above order, the assessee went in appeal before the Id. CIT(A), where the assessee challenged the order passed by the Assessing Officer stating that the Id. PCIT issued notice u/s 263 of the Act on 21.12.2020 questioning the deduction claimed u/s 80IC of the Act. In response to the notice u/s 263, the assessee submitted its explanations and proceedings u/s 263 was dropped without any adverse order. Despite the closure of the proceedings u/s 263 of the act, the Assessing Officer reopened the case u/s 147 and issued a notice u/s 148 of the Act dated 30.03.2021 citing the same issue involved as was in proceedings carried out u/s 263 of the Act. Accordingly, the reassessment resulted in disallowance of Rs.3,77,97,000/- and added

the same to the income of the assessee. However, the ld. CIT(A), after considering the submission of the assessee, quashed the reassessment proceedings holding that it was invalid due to procedural lapse and lack of fresh material. While passing the impugned order, the ld. CIT(A) also directed the Assessing Officer to allow credit of advance tax payment made by the assessee and dividend distribution payment reflected in Form 26AS.

4. Aggrieved by the above order, the revenue filed an appeal before us challenging that the reassessment was valid and not based on change of opinion, therefore, the view taken by the ld. CIT(A) may be set aside by sustaining the order of the Assessing Officer.

5. On the other hand, the assessee has filed the cross-objection contending that the notice u/s 148 of the Act was issued to a non-existent entity due to amalgamation making the entire reassessment as bad in law. That the reassessment proceedings were initiated on the same issue which was already considered by Ld. PCIT and dropped the proceedings u/s 263 of the act considering the proceedings as change of opinion.

6. The ld. DR, after hearing the above submission of the ld. AR, contended that the reassessment proceedings were justified as the Assessing Officer discovered error in allowing the deduction u/s 80IC of the Act and the ld. CIT(A) was erred in treating the reassessment as invalid despite the reasons recorded for reopening by the Assessing Officer and the same is bad in law. Moreover, issuance of notices to a non-existent entity does not render the proceedings invalid as claimed by the assessee.

7. On the above contention of the ld. DR, the ld. AR stated that the reassessment proceedings were based on the same issue as was in the proceedings carried out u/s 263 of the Act and the proceedings were

dropped by the ld. PCIT which led to constitution of change of opinion. That the notice u/s 148 of the Act was issued to a non-existent entity i.e. Heinz India Pvt. Ltd. (the amalgamating company) instead of Zydus Wellness Products Ltd. (the amalgamated company) which renders the entire proceeding as invalid. He further stated that the procedural lapse in the reassessment proceedings violated the principles of natural justice.

8. We, after hearing the rival submissions of both the parties and perusing the materials available on record, find that in the present case, the Assessing Officer reopened the assessment u/s 147 of the Act without any fresh evidence but only on the basis of same issue as in the proceedings initiated by the ld. PCIT u/s 263 of the Act. We further notice that in the case of the assessee, the ld. PCIT who dropped the proceedings u/s 263 of the act, exercising his power u/s 147 of the Act and approved reopening proceedings u/s 147 of the Act are the same authority which represents that there was a procedural irregularity. The reopening of the assessment u/s 147 in this case was bad in law as there is no mention of any information or tangible material coming to the knowledge of the Assessing Officer to form the belief that the income of the assessee has escaped assessment. Even, there is no discussion on any such issue for which the assessment was reopened. The impugned addition has been made only on the basis of reappraisal of records, which is nothing but a change of opinion which is impermissible u/s 147 of the Act as held by Hon'ble Supreme Court in the case of CIT Vs. Kelvinator Of India Ltd. reported in 320 ITR 561 (SC). Moreover the notice u/s 148 of the Act and the reassessment order was issued in the name of Heinz India Pvt. Ltd. which is ceased to exist due to amalgamation and as per the Hon'ble Apex Court judgment in the case of PCIT v. Maruti Suzuki India Ltd reported in (2019) 416 ITR 613 (SC) wherein it was held that framing of an assessment order and issuance of

notice to a non-existent company are void ab initio. Considering the above facts and circumstances in the present case, we hold that the reassessment proceedings are invalid due to change of opinion as held by the Hon'ble Supreme Court's judgment in the case of CIT Vs. Kelvinator Of India Ltd. (supra) and issuance of notice u/s 148 of the Act and further proceedings initiated in pursuance to the notice to a non-existent entity, is void ab initio as per the Hon'ble Apex Court's judgment in the case of PCIT v. Maruti Suzuki India Ltd (supra). Therefore, we note that the Id. CIT(A) was correct in quashing the reassessment proceedings and directed the Assessing Officer to allow the tax credit accordingly. Accordingly, the appeal filed by the revenue is dismissed and corresponding cross-objection filed by the assessee is allowed.

9. In terms of the above, the appeal of the revenue is dismissed and cross-objection of the assessee is allowed.

***Kolkata, the 25<sup>th</sup> November, 2024.***

Sd/-  
**[Rajesh Kumar]**  
**Accountant Member**

Sd/-  
**[Sonjoy Sarma]**  
**Judicial Member**

Dated: 25.11.2024.

RS

*Copy of the order forwarded to:*

1. Zydus Wellness Products Ltd.
2. DCIT, Circle-3(2), Gangtok
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches