IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 975 OF 2014
WITH
INCOME TAX APPEAL NO. 977 OF 2014

Commissioner of Income Tax-2 .. Appellant

v/s.

Walchand Netsoft Pvt. Ltd. .. Respondent

Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the appellant
Mr. V.S. Hadade for the respondent

CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.

DATED : 25th OCTOBER, 2016.

P.C.

1. These two appeals by the Revenue under Section 260A of the Income Tax Act, 1961 (the Act) challenge a common order dated 13th November, 2013 passed by the Income Tax Appellate Tribunal (Tribunal). The impugned order is a common order in respect of the Assessment Years 2002-03, 2003-04 and 2004-05. The present appeals concern itself with Assessment Years 2002-03 and 2004-05.

2. The Revenue has for the two assessment years raised an identical question of law for our consideration, as under :-

(i) Whether on the facts and circumstances of the case, the Tribunal was right in law in quashing the re-assessment proceedings, relying on the decision of the Hon'ble Supreme Court of India in Commissioner of Income Tax Vs. Kelvinator of India reported in 320 ITR 561 and holding that there was a change of opinion by the Assessing Officer ?

3. It is an undisputed position that for both the assessment years, the regular assessment was done under Section 143(3) of the Act. During the regular assessment proceedings, the issue of appropriate treatment of technology expenses either as capital or revenue, incurred by the respondent assessee was examined by the Assessing Officer. This in the context of Section 35D of the Act. In fact, for both the assessment years, the issue of treatment of technology expenses travelled right up to the Tribunal and the disallowance of expenditure made by the Assessing Officer on the aforesaid account was set aside.

4. Thereafter, on 20th March, 2009, the Assessing Officer issued notices under Section 148 of the Act seeking to reopen the assessment for two subject assessment years. The reason recorded in the reopening notices was treatment to be given to the technology expenses incurred by the respondent assessee either as capital or revenue in the context of Section 35D of the Act.

5. The Tribunal by the impugned order has rendered a finding of fact that this very issue which forms the basis of reopening notices was a subject matter of consideration during the regular assessment proceedings under Section 143(3) of the Act. Consequently, the reopening notices for both the assessment years were not based on reason to believe that the income chargeable to tax has escaped assessment as it proceeds on a mere change of opinion. Thus, following the Apex Court decision in ***Commissioner of Income Tax Vs. Kelvinator of India Ltd. 350 ITR 561*** the impugned order of the Tribunal set aside the reopening notices dated 20th March, 2009 for both the assessment years.

6. We find that the impugned order of the Tribunal is unexceptionable as on the finding of fact that the notices of reopening are based on change of opinion, it applied the law as laid down by the Apex Court in Kelvinator of India (supra) that reopening notices on a mere change in opinion were not sustainable.

7. Accordingly, these appeals do not give rise to any substantial question of law. Thus, not entertained.

8. Both the appeals are dismissed. No order as to costs.

(S.C. GUPTE, J.) **(M.S. SANKLECHA, J.)**