

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

and

The Hon'ble Sri Justice T.Amarnath Goud

I.T.T.A. No.713 of 2017

Dt: 21-11-2017

Between:

Prl.Commissioner of Income Tax-5,
Kondapur

....Appellant

and

M/s.United States Pharmacopeia India Pvt. Ltd.,
Hyderabad

....Respondent

Counsel for the Appellant:

**Mr.B.Narasimha Sarma
Sr.Standing Counsel for IT Dept.,**

The Court made the following:



Judgment: (per Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This Appeal arises out of Order, dated 05-05-2017, of the Income Tax Appellate Tribunal, Hyderabad Bench 'A' (SMC), Hyderabad (for short 'the Tribunal'), whereby it has held that reopening of assessment by the Assessing Officer (for short 'the AO') was not based on any tangible material found after making the assessment order and such reopening was based on change of opinion, which was not permissible as per the judgment of the Supreme Court in **CIT vs. Kelvinator of India Ltd.**¹

At the hearing, Mr.B.Narasimha Sharma, learned Senior Standing Counsel for the Income Tax Department, made a strong bid to convince this Court that the aforementioned finding of the Tribunal is incorrect. He is, however, unable to point out the fresh material found by the AO after passing of the assessment order warranting reopening of the assessment by invoking his powers under Section 147 of the Income Tax Act, 1961.

¹ [2010] 187 Taxman 312

While relying upon the judgment of the Supreme Court in **CIT vs. Kelvinator of India Ltd.** (1 supra), the Tribunal observed as under:

“In conclusion, the Hon’ble Delhi High Court has held that an assessment cannot be reopened on a mere change of opinion; reason to believe that the income chargeable to tax has escaped assessment is one of the conditions precedent for invoking the jurisdiction of the AO for reopening assessment u/s 147. Considering the principles laid down by the Hon’ble Supreme Court, it cannot be stated that AO has not examined this issue, which is very obvious not only from the annual report but also from various expenditure claims made during the year. Thus, I am of the opinion that there is no ‘tangible material’ to come to a different opinion or to take a different opinion. The very basis of earlier opinion being reviewed by the AO in the reassessment proceedings will certainly come into the domain of the ‘review of the order’ by the successive officer. Review of the order cannot be done in the form of reopening of assessment without there being any tangible material to form a different opinion, when the assessment is reopened within the four years from the end of the assessment year. In this case, since the assessment being reopened is within the four years from the end of the assessment year, the principles laid down by the Hon’ble Supreme Court that there should be ‘tangible material’ to form a different opinion would certainly come into play, since the very same material, which was examined at the time of original assessment, is the basis for recording reasons by the AO before the reopening of assessment. I am of the view that the conditions of Section 147 have not

been satisfied in this case. Accordingly, reopening per se is bad in law.”

The Tribunal has also rendered findings on merits in favour of the respondent- assessee while setting aside the order of the AO as confirmed by the Commissioner of Income Tax (Appeals).

The question as to whether reopening of the assessment is based on fresh tangible material or not is a question of fact, which was found by the Tribunal in favour of the respondent. Therefore, no substantial question of law arises for consideration in this Court in the present Appeal.

Accordingly, the Appeal is dismissed.

(C.V.Nagarjuna Reddy, J)

(T.Amarnath Goud, J)

Date: 21-11-2017
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