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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P. (C) 12303/2009

BIOTECH INTERNATIONAL LIMITED AND ANOTHER ..... Petitioners

Through: None.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 3(1), NEW DELHI ..... Respondent

Through: Mr. P. Roychoudhuri, Sr. Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **10.01.2017**

The assessee/petitioner is aggrieved by reopening of its assessment for the assessment year 2002-03 and states that the reasons for reopening furnished to it indicate that the Assessing Officer proceeded upon the review of the previous opinion and did not base it upon any tangible material nor did he indicate that there was any material suppression of facts.

The reasons for reopening the assessment supplied to the petitioner - dated 24.03.2009 - justifying the notice under Section 147/148 of the Income Tax Act, 1961 reads as follows: **-**

"REASONS FOR REOPENING THE CASE U/S 148 IN THE CASE OF M/S BIOTECH INTERNATIONAL LTD. FOR A.Y.2002-03.

The return of income in this case for the AY 02-03 was filed on 31.10.2002 declaring a NIL income. Subsequently, the return was processed u/s 143 (1) of the I.T.Act, 1961 on 28.02.2003. No scrutiny assessment u/s 143 (3) was carried out in this case.

> *"Section 80IA of the I.T. Act, 1961 provides that where the gross total income of an assessee includes any profits and gains derived by an undertaking from any business referred to in sub section (4) (such business being hereinafter referred to as the eligible business), there shall, in accordance and subject to the provision of this section, be allowed, in computing the total income of the assessee, a deduction of an amount equal to hundred per cent of the profits and gains from such business for ten consecutive asstt. years."*

The perusal of asstt. Records for the AY 02-03 reveals that that the assessee co. was engaged in the business of manufacturing and trading of Biological Pesticides, Mosquito Nets and Running Business Centre Services as per tax audit report in form no.3CD which do not relate to provision of infrastructure facility, telecommunication services, industrial parks and power generation, transmission and distribution which resulted in escapement of income by Rs.5689765/-.

In view of above facts of the case, I have reasons to believe that the income to the tune of Rs.5689765/- has escaped assessment because of failure on part of assessee to disclose fully and truly material facts necessary for asstt. And hence notice u/s 148 is hereby issued for reopening u/s 147 of the I.T. Act."

The petitioner urges that the reassessment notice does not stand the scrutiny of law and relies upon the judgment of the Supreme Court in *Commissioner of Income Tax, Delhi vs. Kelvinator of India Ltd.* (2010) 320 ITR 561 (SC).

The Revenue on the other hand in its affidavit and before this Court justifies the reassessment notice stating that the original assessment was not a scrutiny based one and that the deduction claimed under Section 80IA @ ₹56,89,767/- on a deeper scrutiny was found to be not justified.

Kelvinator (supra) has settled all controversies with respect to the revenue's power to reopen an assessment. The Supreme Court has permitted exercise of such power if it is based upon tangible material, i.e., objective documents or circumstances outside of the existing report which point to escapement of income on account of material suppression or other such omission by the assessee. In the present case, the impugned notice does not satisfy the twin pre-conditions which can justify the reassessment proceedings. As a result the impugned notice dated 27.03.2009 based upon the reasons to believe dated 24.03.2009 and all other proceedings emanating from it are hereby quashed.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

JANUARY 10, 2017
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