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

INCOME TAX APPEAL NO. 863 OF 2016

The Pr. Commissioner of Income Tax-3 .. Appellant

v/s.

M/s. Suma Shilp Ltd. .. Respondent

Mr. Suresh Kumar for the appellant
None for the respondent

CORAM : AKIL KURESHI &
M.S. SANKLECHA, J.J.

DATED : 11th DECEMBER, 2018.

P.C.

1. The Revenue is in appeal against the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) dated 12.08.2015.

2. Several questions are framed in the appeal memo. However, we would focus only on one of them namely; the decision of the Tribunal in connection with the validity of the re-assessment proceedings. For such purpose, following question was presented for our consideration :-

> *"Whether on the facts and in the circumstances of the case and in law, the Tribunal has erred in treating the reassessment as bad in law?*

3. The issue pertains to the Assessment Year 2007-08. The respondent assessee is a company registered under the Companies Act. The return filed by the assessee was taken in scrutiny by the Assessing Officer, who passed the order under Section 143(3) of the Act on 12.09.2012. In order to reopen such assessment, the Assessing Officer issued the notice within a period of 4 years from the end of the relevant assessment year. The assessee contested the validity of the notice for re-opening of the assessment. The Assessing Officer rejected the ground and also made certain additions during the course of re-assessment proceedings. The CIT(A) allowed the assessee's appeal, upon which, the Revenue preferred appeal to the Tribunal. The Tribunal dismissed the Revenue's appeal holding that the issue of depreciation claimed by the assessee which was the ground for re-opening of assessment, was examined by the Assessing Officer in the original scrutiny assessment. The Tribunal relied on the decision of the Supreme Court in case of ***Commissioner of Income Tax Vs. Kelvinator of India Ltd. (2010) 320 ITR 561*** and held that reopening of the assessment is not permissible on change of opinion. The Tribunal also recorded that in the reasons itself the Assessing Officer had noted the error in claiming the depreciation from the assessment record itself and

came to the conclusion that the issue was examined during the original assessment proceedings and that the Assessing Officer did not have new material outside the assessment records. The Tribunal, therefore, correctly held that the notice of re-assessment was invalid. No question of law arises.

4. The tax appeal is dismissed.

(M.S. SANKLECHA, J.) **(AKIL KURESHI, J.)**