

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

INCOME TAX APPEAL NO.854 OF 2016

The Pr. Commissioner of Income Tax-8 .. Appellant

v/s.

M/s. Zee Media Corporation Ltd. .. Respondent

Mr. N.C. Mohanty a/w Ms. Padma Divakar for the appellant
Mr. Jay Bhansali 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 have been framed in this appeal. First question concerns the correctness of the decision of the Tribunal in holding that the proceedings of re-assessment under Section 147 of the Income Tax Act, 1961 (“the Act” for short) were invalid. The remaining questions raised by the Revenue are on merits because the Tribunal after coming to the conclusion that the re-assessment was invalid, proceeded to examine the issues on merits and gave its opinion thereon. For the

purpose of this tax appeal, we consider only the question of validity of the re-assessment proceedings. In this context, the Revenue has presented following question for our consideration :-

“Whether on the facts and circumstances of the case and in law, the Tribunal is justified in holding that the reassessment proceeding u/s 147 of the Act is unsustainable in law?”

3. This issue pertains to Assessment Year 2008-09. The respondent assessee is a company registered under the Companies Act and is engaged in the business of broadcasting and running of satellite television channel. For the said Assessment Year 2008-09, the assessee had filed its return of income declaring total income of Rs.65.37 crores (rounded off). This return was subsequently revised by declaring total income of Rs.65.75 crores (rounded off). The Assessing Officer undertook scrutiny assessment of this return. He passed order under Section 143(3) of the Act on 10.12.2010 determining the assessee's total income at Rs.65.88 crores (rounded off).

4. To reopen said assessment, the Assessing Officer issued a notice under Section 148 of the Act on 28.02.2013. This notice thus, was issued within a period of 4 years from the end of relevant assessment

year. In order to issue the notice, the Assessing Officer had recorded following reasons:-

“The assessee during the year had acquired program / films rights of Rs.99,05,07,680/-. And the same was debited to P & L Account under the head operational expenses. Since, the film rights are an intangible asset, one fourth of the same i.e. Rs.24,76,26,920/- can only be allowed. That has resulted in underassessment of income of Rs.74,28,80,760/-.”

5. The assessee contested very notice of reopening *inter alia* on the ground that the Assessing Officer having examined the issue in the original assessment proceedings, the same could not be subject matter of re-assessment. The Assessing Officer rejected the contention and proceeded to pass a fresh order of assessment. CIT(A) also rejected the assessee's contention in this regard, upon which the issue reached the Tribunal. Tribunal by the impugned judgment came to the conclusion that the issue was examined by the Assessing Officer during the original scrutiny assessment. There was no new material available with the Assessing Officer. Any attempt on his part to reopen the assessment would, therefore, be on the basis of change of opinion. In the process, the Tribunal took note of the detailed scrutiny that the Assessing Officer had carried out during the original assessment. The Tribunal

reproduced questions nos. (5) and (11), raised by the Assessing Officer during the regular assessment. Question no.(5) called upon the assessee to submit a detail note on nature of business carried on by the assessee and *modus operandi* of the business. Question no.(11) called upon the assessee to submit details of inventories and basis of valuation. The Tribunal was of the opinion that these questions which pertain to the nature of the assessee's business and asked for the inventory had direct relation to the assessee's valuation i.e. TV programs and film rights. The Tribunal noted that the relevant details were submitted by the assessee under its letter dated 24.11.2010. The Tribunal noted that these questions arose in the context of note no.(7) to the financial statement submitted by the assessee. This note on accounts was also acknowledged by the Assessing Officer during the regular assessment. This had relation to the consistent method adopted by the assessee for valuation of its inventories of TV programs and film rights. The Tribunal, therefore, was of the opinion that the only relevance of the said questions raised by the Assessing Officer during the original scrutiny assessment, was in relation of the assessee's valuation of its film rights. We may note that in the reasons recorded, the Assessing Officer desired to dis-allow 1/4 of the assessee's expenditure in acquisition of film rights on the ground that the same

were intangible assets. Whatever be the validity of the Assessing Officer's preposition, it cannot be denied that the entire issue was examined by the Assessing Officer during the original scrutiny assessment. The Tribunal correctly noted that the Assessing Officer had raised relevant queries and elicited response from the assessee. The fact that the Assessing Officer did not make any dis-allowance, would be of importance. In our opinion, the Tribunal correctly came to the conclusion that in absence of any new tangible material, which was not on record during the original assessment proceedings, any attempt on the part of the Assessing Officer to reopen the assessment on this ground would be based on a mere change of opinion.

6. The Supreme Court in the case of ***Commissioner of Income Tax Vs. Kelvinator of India Ltd. (2010) 320 ITR 561*** has held that even post the amendments in Section 147 of the Act w.e.f. 01.04.1989, the concept of change of opinion continues to apply. Learned Counsel for the Revenue however, contended that the Assessing Officer had not specifically raised queries in respect of proposed dis-allowance as recorded in the reasons. In our opinion, as long as certain claim made by the assessee was examined by the Assessing Officer, whether the Assessing Officer raised correct queries and came to the correct

conclusion or not, in the context of reopening of assessment, would be of no consequence. There is a vital difference between a conclusion of the Assessing Officer after scrutiny which may appear to the Revenue to be erroneous and a situation where the Assessing Officer during the scrutiny assessment does not examine a particular claim of the assessee altogether. The latter will follow within the purview of reopening of assessment, particularly when the notice is issued within a period of 4 years but the former may not. Since we uphold the Tribunal's decision on the invalidity of the reopening, the other issues on merits need not be gone into. No question of law arises.

7. In the result, tax appeal is dismissed.

(M.S. SANKLECHA, J.)

(AKIL KURESHI, J.)