R.M. AMBERKAR
(Private Secretary)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

INCOME TAX APPEAL NO. 917 OF 2016

Pr. Commissioner of Income Tax - 6 .. Appellant

Versus

Magna Casting & Machine Works P Ltd .. Respondent

....

- Mr. Tejveer Singh for the Appellant

....

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

DATE : JANUARY 21, 2019.

P.C.:

1. This appeal is filed by the Revenue to challenge the Judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short) dated 21.11.2014. Following questions are presented for our consideration:-

> "(i) Whether on the facts and circumstances of the case and in law, the Tribunal was correct in law in quashing the proceedings initiated by the Assessing Officer under Section 147 of the Income Tax Act, 1961?
>
> (ii) Whether on the facts and circumstances of the case and in law, the Tribunal was correct in law in holding that a decision of the Tribunal on the issue could not vest jurisdiction in the Assessing Officer to exercise his powers under Section 147 of the Income Tax Act, 1961?

(iii) Whether on the facts and circumstances of the case and in law, the Tribunal has erred in law in not appreciating the judgments of various High Courts quoted by the Commissioner of Income Tax (Appeals) in Para 3.6 of his order in which it has been held that the orders of the Superior Courts and Tribunals constitute information or tangible material for reopening of assessment under Section 147 of the Income Tax Act, 1961?

2. The issue pertains to validity of the proceedings for reassessment and concerns the respondent - assessee for the assessment year 2007-08. The respondent - assessee is 100% Export Oriented Unit ("EOU" for short). In the return filed for the relevant assessment year, the assessee had claimed deduction of profit derived from such export business in terms of Section 10B of the Income Tax Act, 1961 ("the Act" for short). A part of such claim of Rs. 4.26 Crore (rounded off) related to the assessee's sale of goods to another EOU. Through the process of reassessment, the Assessing Officer desired to disallow such claim of the assessee. The Tribunal in the impugned order, however, held that the notice of reassessment was invalid in view of the fact that said claim was examined by the Assessing Officer during the original assessment proceedings. In such order of assessment passed under Section 143(3) of the Act, the

Assessing Officer had recorded following observations :

> "4. The assessee has made direct export of Rs. 40,53,728/- and export to EOU of Rs. 10,12,61,099/- and deduction u/S. 10B of Rs. 4,26,30,184/- has been claimed on Rs. 10,35,06,894/- (total export turnover after excluding freight and insurance) received in foreign exchange. It is claimed that the sale from the EOU to another EOU are deemed to be exports. As per chapter 8 of the foreign trade policy. As per sec. 8.2 - Categories of supply of goods to EOU shall deemed to be exports, payment for which is received either in Indian Rupees or in Foreign Exchange. The equivalent invoice value of foreign exchange in US-S 22,04,611.75/- has been realized within due dates, as per Bank Realization Certificates. As regards direct export the equivalent value is US-$ 89,422/- has been realized within due dates, as per Bank Realization Certificates. Copies of bills, shipping bills and airway bills are furnished by the assessee."

3. On the basis of such discussion, the Tribunal came to the conclusion that the issue was examined during the original scrutiny assessment and therefore, could not be subject to reassessment proceedings.

4. We are in agreement with the view taken by the Tribunal. The Tribunal has correctly placed reliance on a decision of the Supreme Court in the case of **CIT Vs. Kelvinator of India Ltd**[1] holding that even post amendment in Section 147 of the Act w.e.f. 1.4.1989, the

1 (2010) 320 ITR 561 (SC)

concept of change of opinion would continue to apply. In the present case, the Assessing Officer had examined entire claim of deduction under Section 10B of the Act. This included the claim made by the assessee to another EOU. This element of the claim was also examined by the Assessing Officer as can be seen from the above quoted portion of assessment order. Any attempt on his part to disallow the claim would now be based on mere change of opinion.

5. In the result, no question of law arises. The Tax Appeal is dismissed.

[M.S. SANKLECHA, J.] **[AKIL KURESHI, J]**