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

INCOME TAX APPEAL NO.1430 OF 2016

The Pr. Commissioner of Income Tax-5 .. Appellant

v/s.

M/s. Goenka Diamond & Jewels Ltd. .. Respondent

Mr. Suresh Kumar for the appellant
Mr. Sameer Dalal for the respondent

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

DATED : 15th JANUARY, 2019

P.C.

1. This appeal is filed to challenge the judgment of the Income Tax Appellate Tribunal ("the Tribunal" for short), raising following question for our consideration :-

> *"(i) Whether on the facts and in circumstances of the case and in law, the Tribunal was justified in allowing the appeal of the Assessee by relying upon the decision of the Apex Court in case of CIT Vs. Kelvinator of India Ltd. (2010) 320 ITR 561 (SC) without appreciating that the facts of the said case is distinguishable from the facts of the present case of the assessee?"*

2. The respondent assessee is a registered company. For the Assessment Year 2007-08, the assessee had filed its return of income

which was taken for scrutiny by the Assessing Officer. The assessee's main contention is that claim of exemption under Section 10AA of the Income Tax Act (“the Act” for short) on which the reopening notice is based had come up for consideration by the Assessing Officer during such scrutiny assessment. To reopen such assessment, the Assessing Officer issued a notice under Section 148 of the Act. The Tribunal by the impugned judgment held that the entire issue was scrutinized by the Assessing Officer and, therefore, reassessment would not be permissible. The Tribunal relied on the decisions of the Delhi High Court in case of ***CIT Vs. Eicher Ltd. (2007) 297 ITR 310*** and Gujarat High Court in case of ***M/s. Ganesh Housing Corporation Ltd. Vs. DCIT (2013) 350 ITR 131*** and held that any attempt to reopen such an assessment on the part of the Assessing Officer would amount to change of opinion. This aspect has been emphatically laid down by the Supreme Court in case of ***CIT Vs. Kelvinator of India Ltd. (2010) 320 ITR 561***.

3. No question of law arise. The tax appeal is dismissed.

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