

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

IA NO:GA/2/2017 (OLD NO. GA/1141/2017)
IN
ITAT/129/2017
COMMISSIONER OF INCOME TAX (LARGE TAX PAYERS UNIT),
KOLKATA
VS.
M/S. CENTURY PLYBOARDS (INDIA) LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date: November 25, 2021.

Appearance :
Mr. Smarajit Roy Chowdhury, Adv.
Mr. Sushil Kumar Mishra, Adv.
... for the appellant

Mr. J. P. Khaitan, Sr. Adv.
Mr. Swapna Das, Adv.
Mr. Siddharth Das, Adv.
... for the respondent

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act, in brevity) is directed against the order dated 13th July, 2016 passed by the Income Tax Appellate Tribunal “C” Bench, Kolkata in ITA Nos.2306 & 2307/Kol/2013 for the Assessment Years 2007-08 and 2008-09. The revenue has raised the following substantial question of law for our consideration:

“1. Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in law is not appreciating that the re-opening of assessment proceedings under section 148 of the Income Tax Act is legal and valid?”

We have elaborately heard Mr. Smarajit Roy Chowdhury, learned standing counsel for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel for the respondent/assessee.

The short issue involved in this appeal is whether the reopening of the assessment was valid in law. The assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] – XII, Kolkata challenging the order of reopening of the assessment as well as other issues. By placing reliance on the decision of the Hon’ble Supreme Court in the case of *CIT vs. Kelvinator of India Limited* reported in 320 ITR 561 (SC) the assessee contended that the Assessing Officer had no power to review and only he has power to reassess and the reassessment based on the fulfilment of certain preconditions which were not being fulfilled. Therefore, the reassessment is bad in law. That apart, the assessee contended that the reasons recorded would clearly show that it is a case of reassessment of opinion already placed at the time of original assessment and the reassessment is a clear case of change of opinion. The Commissioner of Appeal did not agree with the assessee’s contention in paragraph 4 of the order and rejected such contention.

We have perused the paragraph 4 of the order passed by the CIT (Appeals) and we find that the CIT (Appeals) has not assigned any specific reason as to how and in what manner the Assessing Officer was justified in reopening the assessment though the reopening was within the period of four years. The assessee carried the matter to the Tribunal. The Tribunal has rightly gone into the factual position and also specifically noted that the Assessing Officer at the time of original assessment had issued notice to the assessee under Section 142 (1) of the Act and also raised queries which were answered by the assessee and after considering the reply, the original assessment was completed. Therefore, the Tribunal held that the reassessment proceeding is not sustainable. We find that the reasons assigned by the Tribunal to set aside the reopening of the proceeding to be valid and proper.

Accordingly, the appeal fails and the same stands dismissed. The substantial question of law is answered against the revenue.

With the dismissal of the appeal, the connected stay application is also dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)