

ITAT AHMEDABAD :_ NAINUDEVI A. PRAJAPATI, C/O. MUKESH M. PATEL & CO. VERSUS INCOME TAX OFFICER, WARD-2 (2) , BARODA, No.- I.T.A. No. 3478/Ahd/2015

Dated.- August 11, 2023

Reopening of assessment - reason to believe - change of opinion - scrutiny of records reveal that the assessee has furnished no supporting evidence regarding genuineness of 9 sundry creditors

Facts _the assessee filed return of income under Section 139(1) of the Act declaring total income of ₹ 4,50,177/-. The case was selected for scrutiny and assessment order under Section 143(3) of the Act was passed on 30-12-2011, determining the total income at ₹ 10,39,054/-. After the assessment, it was discovered by the assessing officer that while estimating the income of the assessee, the then assessing officer had failed to add the sundry creditors of ₹ 1,63,03,871/- to the total income of the assessee, even though, the assessee had failed to furnish details and evidence of their genuineness. Therefore, the assessing officer had reason to believe that income to the tune of ₹ 1,63,03,871/- had escaped assessment and the case was reopened under Section 147 of the Act. The assessee failed to furnish the return of income in response to notice under Section 148 of the Act. Assessment under Section 143 (3) r.w.s 147 of the Act was completed on 31-03-2014, determining total income at ₹ 1,77,91,657/- after addition of sundry creditors of ₹ 1,63,03,871/-. Aggrieved by the assessment order, the assessee preferred appeal before CIT (Appeals), who dismissed the appeal of the assessee

HELD THAT:- As issue regarding “sundry creditors” remaining unverifiable was specifically enquired into during the course of original assessment proceedings. Therefore, in our considered view, the assessing officer cannot resort to the same issue and make additions to the total income on the very same

ground/issue for consideration, which has been considered and enquired into detail during the course of original assessment proceedings and which formed the basis of framing of original assessment order.

In the case of Kelvinator India Ltd. [2010 SUPREME COURT] Hon'ble Supreme Court has categorically held that "change of opinion" is an in-built test to check abuse of power by the Assessing Officer. Hence, for the purpose of re-opening of assessment, there has to be some fresh tangible material which was not available with the Assessing Officer at the time of original assessment proceedings. In absence of any such fresh tangible material, the re-opening cannot be resorted to since the same would amount to "mere change of opinion". Further, the Supreme Court held that "mere change of opinion" cannot be per se "reason to reopen" the assessment proceedings which have already been concluded.

Thus in the instant facts the re-assessment proceedings have been initiated on a "mere change of opinion" and hence the same are not liable to be sustained. Accordingly, we direct, that the re-assessment order having been passed on "mere change of opinion" is liable to be quashed.