

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD ' A ' BENCH, HYDERABAD.**

**BEFORE SHRI S.S. GODARA, JUDICIAL MEMBER AND
SHRI L. P. SAHU, ACCOUNTANT MEMBER
(Through Virtual Hearing)**

**ITA No.1744/Hyd/2018
(Assessment Year : 2010-11)**

Income Tax Officer,
Ward 1, Kurnool.

.....Appellant.

Vs.

M/s. Kurnool Seeds Pvt. Ltd.,
Kurnool.
PAN AACCK3170G

.....Respondent.

C.O. No.2/Hyd/2021
ITA No.1744/Hyd/2018
(Assessment Year : 2010-11)
(By Assessee)

Appellant By : Shri Rohit Majumdar (D.R)
Respondent/C.O. By : Shri T.Rajendra Prasad, C.A.

Date of Hearing : 10.06.2021.
Date of Pronouncement : 01.06.2021.

O R D E R

Per Shri S.S. Godara, J.M. :

This Revenue's appeal 1744/Hyd/2018 along with assessee's cross objection 2/Hyd/2021 therein arise from

the CIT(A), Kurnool's order dt.18.06.2018 in case No.10122/ CIT(A)/KNL/2017-18 involving proceedings u/s. 143(3) of the Income Tax Act, 1961 ('the Act').

Heard both the parties. Case files perused.

2. Coming to the Revenue's appeal 1744/Hyd/2018 challenging correctness of the order of the CIT(A)'s order terming the impugned reopening as not sustainable in law, both the learned representatives took us to the lower appellate findings reading as under :

2. The appellant company filed its return of income for the assessment year 2010-11 on 14.10.2010 disclosing taxable income of Rs.9,65,240/-. The regular assessment was completed u/s 143(3) after calling for details and after scrutinizing all the details required on 28.03.2013. The AO made certain additions and determined the income at Rs.19,25,903/-. The AO later initiated proceedings u/s 147 to bring short account of closing stock of Rs.53,81,261/-. The AO completed the assessment u/s144 rws 147 on 27.12.2017 determining the income of at Rs.73,07,161/- by making an addition of Rs.53,81,261/-. It is against such an addition the appellant filed the present appeal.

3. In response to the hearing notice, Sri.Chandrakanth Khatri appeared. During the course of hearing, the learned AR filed the written submissions. He contended that the notice u/s 148 was issued after a period of 4 years on the basis of audit objection. The original assessment was completed u/s 143(3). No fresh information was brought on record and, therefore, the proceedings u/s 147 is not valid. The learned AR relied on the following decisions:

- a) **The decision of the Supreme Court in the case of CIT vs. Kelvinator of India Ltd., reported in (2010) 187 taxman 312**
- b) **The decision of the Hon'ble ITAT, Bench-A, Hyderabad in ITA No.763/Hyd/2015 dated 22.01.2016 in the case of DCIT vs. Sri P.Vara Prasad Rao, Hyderabad**
- c) **The decision of the Hon'ble ITAT, Bench-A, (SMC) Hyderabad in ITA No.1577/Hyd/2014 dated 10.03.2017 in the case of Spirit BPO Services P.Ltd., vs. ACIT.**
- d) **The decision of the Hon'ble ITAT, Bench-B, Hyderabad in ITA Nos.1428 and 1429 /Hyd/2015 dated 22.03.2017 in the case of Mehta & Modi Homes vs. ITO.**
- e) **The decision of the High Court of Delhi in W.P. (C)422/2006 in the case of Karamchand Appliances Pvt.Ltd., vs. DCIT**

4. Considering the facts of the case and decisions mentioned above, I am of the view that the AO had completed the original assessment u/s. 143(3) of the Act, after considering all the materials submitted by the assessee. Later, the AO reopened the assessment u/s 147 relying on the same materials submitted by the assessee during the original assessment passed u/s 143(3) of the Act. There was **no fresh material** or any information which gives the impression that the income of the assessee has escaped assessment. The initiation of reassessment proceedings u/s 147 of the Act, on the basis of the same material on record and holding that there was escapement of income on short accountal of closing stock by reconciliation of Trading account and details of sales submitted during the course of regular assessment is on **change of opinion**. It was held in the case of

Phool chand Bajranglal Vs ITO, [1993] 203 ITR 456 (SC), where the AO comes into possession of fresh information or new facts, which lead him to form a reasonable

belief that income has escaped assessment, he can reopen the assessment. In the present case, the A.O. not found any fresh information nor new facts.

4.1 In the circumstances as contended by the learned AR, the initiation of proceedings u/s.147 cannot be held as valid. Thus the assessment made by the A.O. is accordingly annulled.”

3. A perusal of the above extracted lower appellate discussion sufficiently indicates that the Assessing Officer had reopened his regular assessment dt.28.3.2013 for the sole reason that the assessee had indulged in short recording closing stock of Rs.53,81,261. We notice in this factual backdrop that all the corresponding details to this effect forming part of assessee's books of account had been duly filed during the course of scrutiny assessment. Coupled with this, learned departmental representative fails to dispute that the Assessing Officer had issued 148 notice dt.30.3.2017 i.e. well beyond the specified period of four years from the end of the relevant assessment year of filing of the return without even indicating as to whether the assessee had not disclosed the corresponding shortfall pertaining to its turnover; **“fully and truly”**, as per 147 section first proviso. We therefore hold this factual backdrop the CIT(A) has rightly termed the impugned

reassessment as a mere change of opinion as per hon'ble apex court land mark decision in CIT Vs. Kelvinator of India Ltd. (supra). We further wish to quote hon'ble Bombay High Court decision in **Hindustan Lever Ltd. Vs. ACIT** 268 ITR 332 (Bom) that the reasons recorded by the Assessing Officer must state that there was failure on the part of the assessee to disclose fully and truly all material facts. It is needless to mention that the reasons are required to be read as they were recorded by the Assessing Officer. And that the Assessing Officer himself must also speak through his reasons and should not keep an also seek through his reasons and should not be an assessee guessing for the same. We conclude in view of all these facts and circumstances that the CIT(A) has rightly accepted the assessee's legal arguments challenging validity of the impugned reassessment. His lower appellate order stands confirmed. The Revenue's appeal ITA 1744/Hyd/2018 fails.

4. The assessee's C.O. No.2/Hyd/2021 stands rendered infructuous in view of our findings in Revenue's appeal. Ordered accordingly.

5. This Revenue's appeal ITA No.1744/Hyd/2017 is dismissed and assessee's C.O. No.2/Hyd/2021 is dismissed

as rendered infructuous. A copy of this common order be placed in respective case files.

Order pronounced in the open court on 1st July,2021.

Sd/-

(L.P. SAHU)
Accountant Member

Sd/-

(S.S. GODARA)
Judicial Member

Hyderabad, Dt.01.07.2021.

* Reddy gp

Copy to :

1.	M/s. Kurnool Seeds (P) Ltd., 81-5A-2-3-II, Raghavendranagar, NH7, Kurnool.
2.	ITO, Ward 1, Kurnool.
3.	Pr. C I T, Kurnool.
4.	CIT(Appeals), Kurnool.
5.	DR, ITAT, Hyderabad.
6.	Guard File.

By Order

Sr. Pvt. Secretary, ITAT, Hyderabad.