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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1963/2016 & C.M.No.8465/2016

INDO COUNT INDUSTRIES LTD. ..... Petitioner

Through : Mr.Om Prakash Mody, Adv.

versus

THE DEPUTY COMMISSIONER OF INCOME-TAX, & ANR. ..... Respondents

Through: Mr. Ashok K. Manchanda Sr.Standing counsel with Ms. Lakshmi Gurung, Jr.Standing counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

<u>O R D E R</u>

% **04.10.2016**

1. The petitioner is aggrieved by reassessment notice issued under Sections 147/148 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") proposing to reopen concluded scrutiny assessment for Assessment Year (AY) 2010-11. The impugned notice reads as follows:

> *"Reasons for issuing notice u/s 147/148 of the IT Act for A.Y 2010-11 in the case of M/s. Indo Count Industries Limited (PAN: AAACI0866P) Assessment for the assessment year 2010-11 was completed u/s 143(3) on 28.03.2013 determining total assessed loss at Rs.30,39,97,529/- as against returned loss of Rs.30,45,69,506/-. The examination of the assessment record has revealed that in the profit & loss account, the assessee had deducted total amount of Rs.11,51,59,292/- on account of Exceptional Items. The expense claimed on these items remained unexamined and unverified during the assessment*

proceedings being the failure on part of the assessee in furnishing the basic details of these expenses for ascertaining the allow ability of these expenses. Therefore, I have reason to believe that income of Rs.11,51,59,292 chargeable to tax has escaped assessment for A.Y 2010-11. Notice u/s 148 of the IT Act, is issued to be assess the assessment for A.Y 2010-11."

2. Brief facts of the case are that the assessee/petitioner had filed its regular returns on 22.09.2010 and furnished copies of income tax returns under Section 139(1) of the Act. The assessee debited ₹11.51crores to its Profit and Loss Accounts [hereafter "P&L Account"] claiming it to be a deduction under the head "Exceptional items". The assessment was selected for scrutiny and the notice was issued to the petitioner on 25.08.2011. Subsequently, the case was transferred to a different ward, to a higher ranking officer and notice was issued on 06.09.2012 under Section 142(1) requiring details in respect of 26 points. Sl. No. 20 queried the petitioner about details of expenses shown in the P&L account exceeding ₹5 lakhs. The AO finalized the assessment on 28.03.2013 by which as against returned loss of (-)₹30,45,69,506/-, the assessed loss of the Petitioner for the assessment year 2010-11 was determined at (-)₹30,39,97,530. During the course of assessment proceedings all details elucidated by the AO including the details pertaining to expenses of ₹11.51 crores was furnished.

3. It is in this background that the impugned reassessment notice was issued. The petitioner contends that the notice is without authority of law as it does not fulfill the requirement of Sections 147/148. It is a mere change of opinion rather than an opinion formation based upon permissible eventuality as it is without any tangible material/ evidence. The assessee referred upon the authority of this Court in *CIT v. Kelvinator of India Ltd.,*

[320 ITR 561 (SC)], to contend that without any fresh material, there was no reason to believe that there was a necessity of reassessment proceedings.

4. The revenue in its submission rebuts the petitioner's argument relying upon Explanations 1 and 2 to Section 147. It is contended that whilst the basic disclosure as to the expenditure is undoubted in the present case, the AO's omission is apparent on account of the fact that it escaped the attention of the AO. Emphasis is placed upon the fact that details which were to be furnished in the original proceedings were not placed which resulted in the initiation of reassessment proceedings. Counsel relied upon *CIT v. Velocient Technologies Ltd. (2015) 376 ITR 131(Del)* in support of the submission that failure on the part of the assessee is not restricted to income tax returns but also extends to the failure to reply to queries satisfactorily during the course of assessment proceedings.

5. The opinion upon which the reassessment notice is furnished in the present case is in relation to appreciation of the fact that a sum of ₹11.51 crores was claimed by the assessee and allowed. Further – the reassessment notice impugned in this case is on an inarticulate premise - inasmuch as there is no discussion by the AO in the original assessment order. The assessee has been able to show that the notice was in fact issued elucidating the very same query with respect to expenditure claimed as deduction in the P&L statement.

6. The Revenue, in our opinion, has proceeded entirely on the basis of an assumption that the assessee did not furnish any satisfactory reply. This led it to conclude that there was no explanation at all and, therefore, no satisfactory explanation and further that the AO did not apply his mind. The very first paragraph of the assessment order proceeds on the footing that the materials elucidated during the course of original assessment were in fact furnished by

the assessee. This in the opinion of the court amounts to compliance and falls within the kind of behavior which places a bar on the Revenue from resorting to reassessment proceedings per *CIT vs.Kelvinator (supra).*

7. For the forgoing reasons, we are of the opinion that the impugned reassessment notice cannot be sustained and is hereby quashed. All proceedings emanating from the reassessment notice are hereby set aside.

8. Writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

OCTOBER 04, 2016

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