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

\+ **ITA 397/2016**

PR CIT-7 ..... Appellant

Through: Mr. P. Raychaudhuri, Sr. Standing Counsel.

versus

RRB ENERGY LTD ..... Respondent

Through: Mr. R.P. Garg, Advocate.

**CORAM:**
**JUSTICE S. MURALIDHAR**
**JUSTICE NAJMI WAZIRI**

**O R D E R**

% **29.07.2016**

**CM No. 25311/2016 (Exemption)**

1. Allowed subject to all just exceptions.

**ITA No. 397/2016**

2. This is an appeal by the Revenue against the impugned order dated 28th January, 2016 passed by the Income Tax Appellate Tribunal ('Tribunal'), in ITA No. 1874/Del/2013 for the Assessment Year ('AY') 2004-05.

3. The short question that arises is whether the ITAT was right in quashing the re-assessment proceeding under Section 147/148 of the Income Tax Act, 1961 ('Act') on the ground that in the garb of re-opening the assessment what the Assessing Officer ('AO') did was to merely change his opinion and review the earlier order passed in the regular assessment proceedings under Section 143(3) of the Act.

4. Inter alia, it has been noted by the ITAT in the impugned order that this Court has in ***RRB Consultants and Engineers (P) Ltd. v. DCIT (2012) 342 ITR 127 (Del.)*** already opined in favour of the Assessee in answering the above issue in an earlier AY 2003-04.

5. There appears to be no substantial difference in the facts and circumstances of the present AY and the AY which covered by the above decision of the Court. Further, as pointed out by the ITAT the decision in ***CIT v Kelvinator of India Ltd. (2010) 320 ITR 561 (SC)*** fully supports the case of the Assessee in this context.

6. No substantial question of law arises for consideration of this Court. The appeal is, accordingly, dismissed.

**S. MURALIDHAR, J**

**NAJMI WAZIRI, J**

**JULY 29, 2016**
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