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

\+ W.P.(C) 11851/2015

JAK EXIM PVT. LTD. THROUGH: ITS DIRECTOR

..... Petitioner

Through: Mr. Amol Sinha and Mr. Rahul Kochar, Advs.

Versus

INCOME TAX OFFICER WARD,13 (2), NEW DELHI

..... Respondent

Through: Mr. Rahul Chaudhary, Sr. St. Counsel.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 20.12.2016

We have heard the learned counsel for the parties. The Assessee is aggrieved by the notice under Section 147/148 of the Income Tax Act, 1961 ('the Act') issued by the respondents in respect of Assessment Year 2008-09. It is contended that the "reasons" to believe which impelled the Revenue to reopen the assessment, are untenable. The assessee Company underwent a change of shareholding pattern in terms of the existent regulations, framed by the concerned revenue authority (NOIDA authority). Such shareholding pattern had to be reported and the assessee, the owner of the leasehold property, was required by these regulations to enter into a Change in Constitution (CIC) Deed which it did on 26th July, 2007. The effect of this CIC Deed was that in fact shareholders relinquished their rights over the leasehold property, as it were, in favour of the new shareholders. However, there was impediment as to the status of the ownership of the property – the assessee continued to be the lessee. This CIC was construed as a transfer of documents because the NOIDA authority applied the regular Circle Rate resulting in payment of stamp duty in excess of the transaction value towards the differential amount. As a result, the AO proceeded on the basis of the transaction of sale/transfer which had not been reported and applying Section 50C of the Act, issued notice.

It is evident from the discussion that in reality the shareholding of the company, i.e., the assessee changed even though its status as the owner of the property remained unchanged. This fact is not disputed by the Revenue; the assessee had reported this fact in the objection preferred to the AO upon the receipt of the impugned notice. The AO's prima facie observations that the CIC was a mere device to facilitate a transfer, is also equally untenable.

In the circumstances, since there was no transaction that required to be reported for which any amounts were received, the opinion formed by the AO was certainly untenable.

The impugned notice dated 12.03.2015 and all proceedings emanating therefrom are hereby quashed. The writ petition is allowed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

DECEMBER 20, 2016/acm