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

+ **ITA 168/2017**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-1

..... Appellant

Through: Sh. Rahul Chaudhary, Sr. Standing
Counsel with Ms. Lakshmi Gurung, Advocate, for
appellant.

Versus

M/S INTERNATIONAL AMUSEMENT LTD. Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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14.03.2017

The Revenue is aggrieved by an order of the Income Tax Appellate Tribunal (ITAT) which affirmed the CIT(A)'s order, setting aside an addition of ₹1 crore made by the Assessing Officer (AO) in the circumstances of the case. The assessee's returns for AY 2003-04 were sought to be reopened upon an information received from the Investigation Wing. After reassessment, a notice under 143(2) was issued to which the assessee did not respond, resulting in the order under Section 144 and an addition of ₹1 crore.

The assessee appealed to the CIT(A) relying upon an additional evidence that was admitted. CIT(A) granted opportunity to the parties through a remand. The remand proceedings did not result in a further

enquiry. The CIT(A) did not uphold the reopening of assessment and also did not sustain the additions made, reasoning as follows:

“.....There is no new information available to the AO for reopening or taking any adverse view in this case. Therefore, the action of the AO in reopening the case without any new facts on record is similar to "mere change of opinion" and hence the order u/s 147 cannot be sustained at this stage as per SC case in Kelvinator (India) Ltd. the AR further explained that the deposits were received by cheque and refunded to those parties the Miller Traders Pvt. Ltd. and Mayank Services Ltd. after 2-3 years. The details which are given by the appellant is annexed to this order. The company was trying to modernize the Appu Ghar at Pragati Maidan under the name International Amusement Ltd. for which he had arranged this fund of Rs. 1 crore of the above two companies in January, 2003. Since the legal proceedings could not be materialized with Govt. of Delhi the appellant dropped the proposal of investing in the company and returned the money to the respective share holders by cheque. Since the appellant has collected the money through bank cheque and their genuineness, identity and creditworthiness has been established, the investment cannot be said to be accommodation entry at all. Therefore, the addition made by the AO of Rs. 1 crore without doing any enquiry or any ground or cross examination of the assessee or giving any opportunity of being heard is hereby deleted. The AO should not do such type of assessment in a hazardous manner without following the principle of natural justice or in not giving the assessee an opportunity of being heard which is the basis requirement of law. Hence addition of Rs.1 crore is deleted.”

The ITAT concurred with the CIT(A)'s order. Learned counsel urges that the ITAT fell into error in holding that there was sufficient material to justify the reassessment notice. It is submitted that reliance placed upon the Investigation Wing's report that in turn was based upon information, was unavailable at the time of completion of assessment under Section 143(3). At that time, the AO had not fully enquired into the loan entries claimed by the assessee and in the circumstances, this Court should intervene with the impugned order. The judgment in *CIT v. Kelvinator of India Ltd.* 320 ITR 561 instructs the Courts that mere change of opinion is not substantial to warrant reassessment notice under Sections 147/148. In the present case, *arguendo*, the reassessments were upheld, nevertheless the ITAT, in this Court's opinion was justified in deleting the addition. This is because the materials which the assessee had relied upon in the course of appeal to the CIT(A) did not receive any matter of scrutiny, superficial or detailed. Even for a moment, if the Revenue is correct that the information which is sourced through Investigation Wing to justify a reassessment, *ipso facto* that was not sufficient to conclude assessment under Section 144. The AO was granted opportunity, not merely at the stage of reassessment but also during the appellate proceedings in the remand when it was possible to verify whether the investments were genuine and whether the credits claimed were genuine given that the amounts were received through normal banking channels, in the context of the assessee's claim that it needed funds for expansion.

Having regard to these circumstances, the Court is of the opinion that no question of law arises. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

MARCH 14, 2017/ajk