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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 826/2016, CM APPL.43372/2016

THE PR. COMMISSIONER OF INCOME TAX (CENTRAL-3)

..... Appellant

Through: Mr. Ruchir Bhatia, Advocate.

versus

UNITECH INDRAPRASTHA TV LTD.

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

28.02.2017

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The question of law urged by the Revenue is with respect to the ITAT's cancellation of the reassessment made - for AY 2004-05. The regular assessment was completed under Section 143 (3) on 26.12.2006. It was reopened and notice under Section 147/148 was issued. The assessee objected to the reopening but was unsuccessful in persuading the lower authorities. The ITAT, however, was of the opinion that the reasons recorded in support of the reassessment could not be sustained. In doing so, it relied upon the judgment in *Commissioner of Income Tax, Delhi vs. Kelvinator of India Ltd.* (2010) 320 ITR 561 (SC).

The ITAT's discussion with respect to the validity of the

reopening is as follows: -

“3. We have given our thoughtful considerations to the rival submissions, including written submissions vis-a-vis all evidence available on record. The reasons for reopening are recorded as under: -

“The undersigned has observed from the perusal of records that incorrect allowance of capital expenditure amounting to Rs.2,20,05,000/- has been allowed during the course of assessment proceedings. I have verified the information from the assessment records of the assessee and it is seen that actually unallowable deduction in respect of expenses on films/tapes of TV serials has been allowed to the assessee. In view of the above, I have reason to believe that “ILLEGIBLE” the extent of at least Rs.2,20,05,000/- chargeable to tax has escaped assessment due to failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment for the A.Y.2004-05. Therefore, it is a fit case for issue of notice u/s 148 of the Act.

3.1 We have found that full facts relating to debited expenses of Rs.2,20,05,000/- on account of expenses on films/Tapes of TV serials were available before the A.O. at the time of framing the original assessment order. All other material facts were already disclosed fully and truly necessary for the said assessment were also available and considered by the A.O. originally. On the basis of the same facts and figures which were considered and one possible view has been taken the same A.O. or his successor A.O. cannot take a different view as it would amount to a change in opinion which is not permitted in law even after 1.4.1989 and even after considering the decisions of Hon’ble Apex Court rendered in this regard. In our considered opinion the

primary facts necessary for the assessee were fully and truly disclosed by the assessee so the A.O. is not entitled to change opinion to commence proceedings for reassessment. Both the grounds taken as reasons for reopening amount to sheer and mere change of opinion and nothing more. In this regard, the ratio decidendi of the case of the Hon'ble Apex Court rendered in the case of CIT Vs. Kelvinator of India Ltd. 320 ITR 561 would apply mutatis mutandis. Accordingly, we hold that the reassessment based on change of opinion cannot survive and has to be quashed. We quash the reassessment order as ab initio void and allow the appeal in this legal ground. Having taken the decision as above, there is no requirement to decide the issue on merits. As a result, the appeal of the assessee succeeds."

In view of the clear ruling in *Kelvinator (supra)* which the ITAT applied - correctly in our opinion - no substantial question of law arises. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

FEBRUARY 28, 2017

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