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

\+ ITA 746/2016

PRINCIPAL COMMISSIONER OF INCOME TAX - 7..... Appellant

Through Mr. Sanjay Kumar and Mr. Dileep Shivpuri, Advs.

versus

RT PAPER BOARD LTD., ..... Respondent

Through None.

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

**ORDER**

**% 10.01.2017**

1. The Revenue is aggrieved by the Income Tax Appellate Tribunal's (ITAT) order which allowed the assessee's appeal. The ITAT held that the "the reasons to believe" which impelled the Revenue to reopen the assessment for the Assessment Year (AY) 2003-04 was unsustainable. It is argued that the ITAT acted in error of law.

2. The "reasons to believe" under section 147/148 are reproduced below:

> *"Reasons: As per the 3 CD Report, the assessee had claimed prior period expenditure amounting to ₹ 5,61,67,181/- in the profit and loss account out of which only ₹ 1,17,24,633/- (17,40,605+99,84,028) related to AY 2002-03 and was claimed in the revised return of AY 2002-03 and ₹ 2,52,14,220/ was added in*

*the computation of taxable income. As the assessee was following mercantile system of accountancy, balance of ₹ 1,92,28,328/- (5,6,67,181-1,17,24,633+2,52,14,220) of prior period expenses should have been disallowed. The omission to do so resulted in over assessment of loss of ₹ 1,92,28,328/- involving potential tax effect of ₹ 68,98,163/-.*

*I have therefore reason to believe that a sum of ₹ 1,92,28,328/- chargeable to tax has escaped assessment. Thus the same is to be brought to tax u/s 147/148 of the Act Notice u/s 148 may be issued, if approved.* "

3. The ITAT relied upon the rulings of this Court to say that in the absence of tangible indicative material, non disclosure, the re-assessment notice was recalled. This is in line with the judgment of the Supreme Court in *CIT vs. Kelvinator (2010) 320 ITR 561 (SC)*.

4. No substantial question of law arises. The appeal is, therefore, dismissed.

**S. RAVINDRA BHAT, J**

**NAJMI WAZIRI, J**

**JANUARY 10, 2017/acm**