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

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Judgment delivered on: 27.11.2017

+ **ITA 54/2017**

PRINCIPAL COMMISSIONER OF
INCOME TAX (CENTRAL) – 1

..... Appellant

Through : Mr Sanjay Kumar, Advocate.

versus

ADITYA KHANNA Respondent

Through : Mr B.N.Goswamy, Advocate.

CORAM:-

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The Revenue's grievance in this case is that its appeal is rejected by the Income Tax Appellate Tribunal (ITAT) on the ground that the tax effect is lower than the stipulated amount in terms of the prevailing Circular. The assessments involving similar questions were remitted for fresh consideration to the Commissioner of Income Tax (Appeals) in the case of other parties, i.e. Mr Arvind Khanna and Mr Navin Khanna.

2. The Revenue urges that the sum of Rs.33,51,269/-, in the facts and circumstances of this case, has to be added under Section 68 of the Income Tax Act (hereafter referred to as 'the Act').

3. Learned counsel relies upon the notice issued under Section 148 of the Act contending that the Revenue had received information from the Enforcement Directorate with respect to the possible disallowance under Section 68.

4. The Assessee, who is represented by the counsel, urges that the respondent is a non-resident and the amounts were remitted by one M/s. Newheaven Nominees Limited.

5. It is contended that the original assessment was completed after filing of Return, when the net income was declared as Rs.98,850/-. Soon thereafter, proceedings under Section 148 were initiated culminating by substantial acceptance of the Assessee's arguments and not resulting in any noticeable addition – by an order dated 31.12.2007. The Assessee has produced the copy of that Assessment Order. It refers to a letter of the Directorate of Enforcement dated 28.03.2006, mentioning about some transactions by the Assessee. The Revenue appears to have issued a fresh notice under Section 148 on 23.02.2012 and recounted virtually the same facts.

6. In this case, the Assessing Officer (A.O.) appears to have completely ignored the earlier re-assessment order – framed under Section 148/143(3) on 31.12.2007. The first re-assessment order noticed all the relevant facts and accepted the net income at Rs.1,03,890/- . The assessment made in the course of assessment proceeding, in the present case, does not refer to any subsequent

material other than the Directorate of Enforcement's letter of 28.03.2006; instead the A.O. appears to have just made a Chart as the basis even while acknowledging that the earlier re-assessment proceedings were concluded on 31.12.2007, clearly stated that *"perusal in assessment records reveals that the remittances received are not considered in the return of income filed by the Assessee and in the course of the assessment proceedings for the Assessment Years 2003-2004 & 2006-2007"*. That clearly shows that the A.O. ignored that the material, which led the Revenue to re-open the Assessment, in the first instance, was the same that he sought to resuscitate in order to make substantial additions.

7. Having regard to these facts, the Court is of the opinion that no substantial question of law arises.

8. The Appeal is, therefore, dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**SANJEEV SACHDEVA
(JUDGE)**

NOVEMBER 27, 2017

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