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

\+ **ITA 1144/2017**

COMMISSIONER OF INCOME TAX-(EXEMPTIONS)
..... Petitioner

Through: Mr. Zoheb Hossain, Sr. Standing Counsel for Revenue.

versus

ASIAN CENTRE FOR ORGANISATION RESEARCH & DEVELOPMENT ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

<u>O R D E R</u>

% **13.12.2017**

1. The Revenue is aggrieved by the impugned order of the Income Tax Appellate Tribunal (I.T.A.T) and Appeals to this Court under Section 260A of the Income Tax Act, 1961(hereafter referred to as *'the Act'*).

2. The assessment for the Assessment Years 2003-2004, 2004-2005, 2005-2006 and 2006-2007 were sought to be re-opened through notices under Sections 147 and 148 of the Act.

3. Ground, on which the assessments were sought to be re-opened were that the amounts received by the Assessee (which had claimed and was granted the exemption under

Section 12A), was that the income and receipts reflected in the concerned assessment years were in fact business or professional income. The expenditure incurred was also sought to be disallowed. One of the grounds that persuaded the Revenue to re-open assessment was the payment of some amounts to one Ms. Kiran Wadhera, who was, it was contended, a '*specified person'* under Section 33A of the Act.

4. The Commissioner of Income Tax (Appeals) - later the ITAT held that re-assessment was unwarranted because the Revenue had no access to any fresh or tangible material warranting the re-opening. It was also held that the Assessing Officer did not make any enquiries in that regard. Both the Appellate Authorities noted that the grounds with respect to re-assessment, i.e. payments made to Ms Kiran Wadhera were also unsupported because she was an employee and did not fall within the description of the '*specified person'*.

5. Having regard to the concurrent finding of the fact and the circumstances, the re-assessment in this case fell outside the permissible parameters indicated by the Supreme Court in *Commissioner of Income Tax versus Kelvinator India*, 320 ITR 561(SC), the Court is of the opinion that no substantial question of law arises.

6. The Court also finds that even otherwise on the merits, there is no change of circumstance warranting a treatment different from the one granted from the previous 27 years because the nature of the Assessee's activities continued to be

the same.

7. The Appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

DECEMBER 13, 2017
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