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

+ ITA 298/2006

JYOTI APPARELS Appellant

Through : None.

versus

COMMISSIONER OF INCOME TAX Respondent

Through : Mr. Zoheb Hossain, Sr.
Standing Counsel, Revenue
with Mr. Deepak Anand, Jr.
Standing Counsel, Revenue.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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06.09.2018

This appeal has been first listed as a Regular matter.

The appeal is an admitted one and has been pending on the Board of this court. On the previous date, the matter was fixed for today specifically for disposal being an old matter.

The appellant is unrepresented as was the case on the previous date. The court has considered the appeal on its merits. The following two questions of law were framed for decision in this appeal :

“(i) Whether the ITAT was right in law in holding that the assessment proceedings had been validly reopened under Section 147 read with Section 148 of the Income Tax Act?”

“(ii) Whether the ITAT was right in law in holding that the assessee was liable to pay interest in terms of Section 234-B of the Income Tax Act?”

The ITAT upheld the concurrent orders of the A.O. and the CIT(A) who rejected the assessee's argument that the reopening of assessment, under Section 148 of the Income Tax Act, was contrary to law. A further argument was that the re-assessment was based upon a mere change of opinion and therefore, impermissible in view of the then prevailing Full Bench ruling of this court in *Commissioner of Income Tax v. Kelvinator of India Ltd.*, (2002) 256 ITR 1. The judgment has been confirmed by the Supreme Court in *Commissioner of Income Tax v. Kelvinator of India Ltd.*, (2010) 320 ITR 561 (SC).

In this case, the assessee filed its return which was processed under Section 143(1) and an intimation was sent on 18.12.2001, for Assessment Year 2000-01. Subsequently, the A.O. recorded satisfaction, and proceeded to issue notice under Sections 147/148. The reasons so recorded by the A.O. are as follows :

“On perusal of return of income it is noticed that during the year under consideration the assessee has earned interest income amounting to ₹ 45,49,600/- for claiming deduction under S.80 HHC of the Act, the assessee has treated this income as business and claimed deduction u/s. 80HHC of the Act.

In earlier assessment years the claim of the that interest income is eligible for deduction u/s. 80 HHC has not been accepted in view of Supreme Court's decision in the case of Cambay Electrical Supply Industries Co. Ltd. Hence the a has claimed excessive deduction u/s. 80 HHC of the Act. Hence provisions of Section 147 are attracted.

Issue notice u/s. 148 of the IT Act 1961 for AY, 2000-01.”

The assessee's argument was that the “reasons to believe” did not bear any date. All the Revenue authorities rejected this contention, after

observing that the notice was issued, less than two years after the intimation under Section 143(1). The finding of the ITAT was that the notice concededly was received by the assessee which must have been provided by the “*reasons to believe*”.

The assessee’s argument in its appeal is that the *Kelvinator* (supra), categorically states that without fresh tangible material, re-assessment notice is impermissible. It is pointed out that the opinion of the A.O. is based upon a perusal of the existing record and therefore, cannot be upheld. This court notices at the very outset that the issue as to whether an intimation under Section 143(1) constitutes a complete assessment or not, is no longer *res integra*. In *Deputy Commissioner of Income Tax & Anr. v. Zuari Estate Development and Investment Co. Ltd.*, 2015 (15) SCC 248, it was held that the legislative intent in the provisions of the Income Tax Act is very clear that the expression “*intimation*” used in relation to Section 143(1) is not to be treated as “*assessment*” which is the term used in regard to an order made pursuant to scrutiny under Section 143(3). This view confirmed to the earlier decision in *Assistant Commissioner of Income Tax v. Rajesh Jhaveri Stock Brokers Private Limited*, 2008 (14) SCC 208.

The ITAT had also rejected the assessee’s argument that the Revenue was bound by the principle of consistency with respect to the deduction under Section 80 HHC having regard to the nature of income which it had reported. The ITAT observed that for the past three years, preceding the assessment year in question, the Revenue has always brought the amounts for tax by denying the benefit.

In view of this categorical enunciation of law in *Zuari Estate Development and Investment Co. Ltd.* (supra), the first question of law is to be answered against the assessee and in favour of the Revenue.

The question no.2 is relating to Section 234-B of the Income Tax Act and the liability to pay interest on TDS amounts deposited late. The notice was restored back to the file of the A.O., who was to make the assessment after complete verification. The question of law therefore, does not arise because it is open to the assessee to in fact dispute the quantification of such amounts, as and when they are made by the A.O.

In view of the above findings, this appeal has to fail and is accordingly dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

SEPTEMBER 06, 2018

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