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

\+ ITA 305/2018

PR. COMMISSIONER OF INCOME TAX-:- 17, NEW DELHI ..... Appellant

Through : Sh. Raghvendra Singh, Advocate.

versus

HARISH CHANDER KHULLAR ..... Respondent

Through : None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

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

% 16.03.2018

The Revenue appeals to this Court under Section 260A of the Income Tax Act, 1961 [hereafter "the 1961 Act"], complaining that the deletion of ₹69,30,800/- by the lower appellate authorities is contrary to Section 54B of the 1961 Act.

The assessment was completed on 19.12.2008; the assessee had reported sale of agricultural land which was acquired for an initial consideration of ₹94,88,940/-. The capital gains earned was ₹1,62,36,847/-. The regular assessment was followed by rectification notice; during the pendency of those proceedings, reassessment notice was issued and the Assessing Officer (AO) concluded the assessment adding the amount in dispute. The ground on which the AO brought to tax the amounts were that the assessee had invested ₹30 lakhs out of the capital gains in a bank which was not a notified bank and that it had not filed returns on the due date and the return of income filed on 30.03.2007 also did not accompany the proof of deposit of unutilized capital gains, and, on top of it, the assessee claims to have purchased another agricultural land at Rajasthan at

₹1,73,84,870/-.

The CIT(A) set-aside the reassessment holding that notice under Sections 147/148 of the 1961 Act was not justified as it amounted to fresh opinion and, therefore, an impermissible review and that, even on the merits, the addition was not justified. The Tribunal followed suit.

It is firstly contended that the Tribunal's finding that the Revenue did not urge any ground with respect to the reopening of the assessment is incorrect because a general ground in support of its appeal has been made. It is next contended that on merits, the deletion was not justified given that the deposit of ₹30 lakhs was neither disclosed nor was it made in a notified bank. Thus, the assessee was not entitled to a claim made in the returns. The ground on which the reassessment was conducted appears to be the Revenue's audit objections. In this regard, the CIT(A) and the Tribunal, in our opinion, followed the settled law in holding that it amounted to formulation of a fresh opinion based upon the same material because the assessee could not be said to have withheld any material information in the returns. Furthermore, on the other issue, i.e. merits, the Court is of the opinion that concurrent findings having been rendered, this Court refrains from interference with these orders.

The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

MARCH 16, 2018/ajk