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

ITA 44/2018 & CM APPL. 1624/2018

ITA 45/2018 & CM APPL. 1625/2018

ITA 46/2018 & CM APPL. 1626/2018

ITA 47/2018 & CM APPL. 1627/2018

PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-8

..... Appellant

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

versus

SHYAM ANTENNA ELECTRONIC LTD. ..... Respondent

Through: Mr. Rohit Jain, Adv.

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

ORDER

% **17.04.2018**

The Income Tax Appellate Tribunal's (ITAT) order upholding the CIT(A)'s decision has been challenged by the Revenue. Both the Revenue Appellate Authorities held that the Assessing Officer's action in re-assessing the returns of the present assessee were not justified as they amounted to an impermissible second opinion.

The issue involved that culminated in the impugned order was the deferred revenue expenditure claimed by the assessee for four assessment years between 2003-04 to 2006-07. It is not disputed that these assessments were completed after scrutiny and due enquiry. Nevertheless, the later AO was of the opinion that the deferred expenditure could not have been allowed in the manner originally under Section 143(3) of the Income Tax Act. This Court notices that the ITAT relied upon the seminal ruling of the Supreme Court in *Commissioner of Income Tax vs. Kelvinator,* (2010) 320 ITR 561 and the subsequent holdings to rule that in the absence of tangible material outside the assessment records or positive indication that the assessee had concealed the material particulars when it filed its returns, re-assessment could not be resorted to. That formulation squarely applies to the facts of this case because the assessee's original return was subjected to scrutiny; the AO had discussed the relevant issue and recorded its reasons. There was no material stringent on record to justify re-assessment.

For the above reasons, the Court is of the opinion that no substantial question of law arises in these appeals; they are accordingly dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

APRIL 17, 2018
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