$~7

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

\+ W.P.(C) 9220/2017

DELOITTE HASKINS & SELLS ..... Petitioner

Through: Mr. Percy J. Pardiwala, Sr. Adv. with Mr. Neeraj, Mr. Vishal Kalra & Mr. S.S. Tomar, Advs.

versus

ASSISTANT COMMISSIONER OF INCOME TAX, NEW DELHI ..... Respondent

Through: Mr. Puneet Rai, Adv.

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

O R D E R

% **13.07.2018**

The petitioner is aggrieved by the re-opening of the assessment under Sections 147/148 of the Income Tax Act for AY 2010-11, by the order dated 25.04.2017.

The brief facts necessary to dispose of this case are that the petitioner had in its return for AY 2010-11 declared ₹9,37,46,160/- which was subsequently revised in terms of the ITD system. The scrutiny assessment was completed on 26.03.2013 determining the final income at ₹12,63,60,210/-. In the circumstances, the impugned notice proposing to reopen the assessment was issued u/s 148, on 30.03.2017. The reasons for reopening were recorded on 30.03.2017. These *inter alia* are as follows:

"In this case, a return declaring an income of Rs. 9,37,46,160/- was filed on 12.10.2010 and also filed a

revised return declaring an income of Rs. 9,37.46,160/ on 30.03.2012 as per ITD system. The assessment of M/s. Deloitte Haskins & Sells for the A.Y. 2010-11 was completed after scrutiny on 26.03.2013, determining an income of Rs. 12.63,60,210/-. It was observed from Schedule 10 of P&L a/c that the assessee deducted an amount of Rs.1,70,44,010/- on account of pension payment to partner who had retired On or after 31.03.2009 from the income as professional fees without deducting TDS from this amount. Thus, expenditure cannot be claimed without deducting TDS as section 17 of the 1.T. Act, 1961, clearly mentions that pension is the part of the salary.

In view of the above, 1have reasons to believe that income of Rs. 1,70,44,010/- chargeable to tax has escaped assessment for A.Y. 2010-11 by reasons of the failure on the part of the assessee to disclose truly & fully all material facts necessary for his assessment for A.Y. 2010-11, and the case is fit for reopening the assessment u/s. 147/148 of the I.T. Act, 1961. "

The petitioner contends that in the absence of any fresh or tangible material outside of the existing record, the respondents could not have issued the re-assessment notice impugned in the present case. They cite *Commissioner of Income Tax v. Kelvinator of India Ltd.* 320 ITR 561 (SC) in support of the proposition that re-assessments to the extent that they are a revision of opinion, are impermissible.

The respondent submits that the re-assessment was necessitated, on account of the careful scrutiny of the profit and loss statement for the concerned year. It was submitted that the Assessing Officer had cogent reasons to believe that the income chargeable to tax had escaped assessment having regard to the fact that apparently no tax deductions were made in respect of the same payouts and that the original order did not express any opinion on the subject.

The decision in *Kelvinator* (supra) is conclusive. In order that an AO can belatedly reopen a concluded assessment –a scrutiny assessment under Section 143(3), as is the present case, there ought to exist "tangible material outside of the existing record" that may be in the form of information received directly or incidentally in the course of other collateral proceedings such as searches, seizure or even subsequent to other assessment year's materials. None of these conditions, which trigger a valid re-assessment, exist on the record. The Revenue is clearly seeking to revisit the concluded issues in the pretext of stating that they were not either appreciated fully or not at all. *Kelvinator* (supra) is conclusive even on that aspect.

In view of the above findings, the impugned re-assessment notice cannot be sustained. The re-assessment notice impugned for AY 2010-11 intimated to the petitioner by the letter dated 25.04.2017 and all further proceedings are hereby quashed.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

JULY 13, 2018/akv **A. K. CHAWLA, J**