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

\+ W.P.(C) 10294/2017, C.M. APPL. No. 41957/2017

BEST BUILDWELL PRIVATE LIMITED ..... Petitioner

Through: Ms. Shashi M. Kapila, Mr. Pravesh Sharma, Mr. Siddharth Kapila, Mr.Sushil Kumar, Advocates

versus

ASSISTANT COMMISSIONER OF INCOME TAX & ORS. ..... Respondents

Through: Ms. Vibhooti Malhotra, Advocate for CIT.

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

O R D E R

% **04.07.2018**

The petitioner questions the reassessment notice dated 29th March 2017 seeking to reopen the assessment for Assessment Year 2010-11.

The facts of the case are that the Petitioner/Assessee's original assessment for the concerned year was subjected to scrutiny; notice was issued on 12.07.2012 after which the taxable income was assessed at Rs.72,11,300/- by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act on 30.11.2012. When a year had elapsed, the AO issued notice under Section 148; seeking to reopen the assessment for the same Assessment Year 2010-11. This time the AO's rationale for reopening assessment was that on account of the investigation, the result of investigation lead to the belief that the assessee had claimed certain expenses, which were really bogus and fictional.

After notice was issued in the reassessment proceedings, the assessee confirmed its earlier return, though it initially objected to reassessment notice. The assessment order under Section 143(3) was made pursuant to the reassessment on 26.03.2014. In this, no additions were made on account of the alleged bogus expenditures, since the AO was satisfied upon his inquiry that the purchases were genuine and the impugned notice was received on the footing that the purchases (claimed for Assessment Year 2010-11) were not genuine but rather bogus.

The reasons recorded therein forming the basis of impugned notice under Section 148 alleges that a total of Rs.1.23 crores was wrongly claimed as purchases, from one M/s.Shubham Trading Company and similarly the inquiries led the Revenue to the *prima facie* conclusion that similar bogus purchases were made from M/s. Balaji Building Material Store and M/s. Nikhil Trading Company.

The Petitioner objected to the reassessment notice contending firstly that four years limitation period prescribed by the proviso to Section147 had elapsed and that in the absence of any tangible or fresh material, the Revenue could not revisit the same issue. It is also contended that the Revenue had revisited the issue in the first reassessment notice, which culminated in no addition on this count and consequently, the attempt to reopen it yet again was nothing but an impermissible review, so held by a three Judge bench decision of the Hon'ble Supreme *Court in Commissioner of Income Tax vs. CIT Kelvinator of India* [320 ITR 561].

The Revenue seeks to justify its action stating that in the second round of proceedings the first reassessment notice and subsequent assessment concluded thereafter, no worthwhile inquiry was made by the AO who based his conclusion on the report of his Inspector with respect to the existence of two of the vendors (M/s. Balaji Building Material Store and M/s.Shubham Trading Company). It was contended that further investigation was resorted to which revealed that in fact the credits could not be claimed as they were not based upon the genuine transactions. Counsel for the respondent relies upon the recent ruling of Hon'ble Supreme Court in *Income Tax Officer vs. TechSpan India (P) Ltd.,* [(2018) 255 Taxman 152 (SC)]. In that judgment, the Hon'ble Supreme Court observed as follows:

> *"12. Before interfering with the proposed re-opening of the assessment on the ground that the same is based only on a change in opinion, the Court ought to verify whether the assessment earlier made has either expressly or by necessary implication expressed an opinion on a matter which is the basis of the alleged escapement of income that was taxable. If the assessment order is non-speaking, cryptic or perfunctory in nature, it may be difficult to attribute to the assessing officer any opinion on the question that are raised in the proposed re-assessment proceedings. Every attempt to bring to tax, income that has escaped assessment, cannot be absorbed by judicial intervention on an assumed change of opinion even if cases where the order of assessment does not address itself to a given aspect sought to be examined in the re-assessment proceedings."*

This Court is of the opinion that the Petitioner's claim has to succeed for simple reason that the scope of the first reassessment notice was identical with what the revenue seeks to examine or reexamine again. More particularly, in the absence of 'fresh tangible material' outside the existing record, the view of the Revenue, is nothing but an impermissible review, in line with the three Judges' ruling in Kelvinator (supra). The imperative of the provisos to section 147 is that the reasons recorded by the concerned officer (AO) inevitably point to the existence of some fresh material outside the existing record. This seems to be the case in the current fact situation; the revenue seems to be bent upon digging into the same pit that it dug in the first reassessment notice. Therefore the petition has to succeed. Accordingly, the impugned reassessment order and all consequent proceedings are quashed.

The writ petition is disposed of.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 04, 2018
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