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

+ **W.P.(C) 11055/2017**

**FIS GLOBAL BUSINESS SOLUTIONS INDIA PVT. LTD.  
(FORMERLY KNOWN AS EFUNDS INTERNATIONAL INDIA  
PVT. LTD.) THROUGH ITS SENIOR FINANCE DIRECTOR**

..... Petitioner

Through Mr. Piyush Kaushik, Adv.

versus

**ASSTT. COMMISSIONER OF INCOME TAX, CIRCLE 9(1), NEW  
DELHI**

..... Respondent

Through

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE A. K. CHAWLA**

**ORDER**

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**10.08.2018**

The assessee in its writ petition challenges a notice issued under Section 148 of the Income Tax Act ('the Act') for Assessment Year 2010-11 complaining that the original return (which had declared Rs.33,64,00,315/-) was assessed under scrutiny under Section 143(3) read with Section 144C of the Act on 30.04.2014, with an addition of Rs.31.13 crores.

The impugned reassessment notice in this case was issued on 30.03.2017; subsequently, the Assessing Officer (AO) furnished the "reasons recorded for issuance of notice" to the assessee. Those reasons *inter alia* states as follows :

*“2. Subsequently, Audit was conducted in the case of M/s FIS Global Business Solutions India Pvt. Ltd. And the Audit party pointed out that the assessee during the assessment year 2010-11 has claimed deduction of Rs.3,11,80,117/- on a/c of Forex Gain on Certegry (Interest Income) and the same was allowed to the assessee by the A.O. Forex Gain on interest income, being revenue in nature, is not an allowable deduction. The mistake resulted in underassessment of income of Rs.3,11,80,117/- on a/c of Forex Gain on interest income.*

*3. Accordingly, the above query of the Audit Party was examined with the assessment records available with the undersigned for A.Y.2010-11 in the case of M/s FIS Global Business Solutions (I) Pvt. Ltd. And it is found that the assessee in its computation of income has claimed amount of Rs.3,11,80,117/- on a/c of Forex Gain on Certegry which is not an allowable expenses, being revenue in nature. The amount of Rs.3,11,80,117/- has been wrongly claimed by the assessee is not allowable as per provisions laid down under the Income Tax Act, 1961. Hence, the income of Rs.3,11,80,117/- which was chargeable to tax has escaped assessment for A.Y.2010-11.*

*4. Following case laws supports reopening of case u/s 147/148 where material already available on records which institutes grounds for reasons to believe that income has escaped assessment.*

*1. CIT & Anr. Vs. Rinku Chakraborty (Kar) 56 DTR 227*

*2. Kalyanji Mavji & Co. Vs. CIT (SC) 102 ITR 287*

*Further, the following case laws also supports reopening of case u/s 147/148 on the basis of factual error pointed out by the Audit Party establishes the grounds for reasons to believe that income has escaped assessment:*

*1. CIT Vs.P.V.S. Beedies P. Ltd. (SC) 237 ITR 13*

2. *Indian & Eastern Newspaper Society Vs. CIT* (119 ITR 996)

3. *CIT Vs. First Leasing Co. Of India Ltd. (Kad.)* 241 ITR 248

*Hence, I have reason to believe that the assessee company has wrongly claimed and was allowed deduction of Rs.3,11,80,117/- on a/c of Forex Gain on Certegy which is not an allowable expenses which has escaped assessment.*

7. *In view of the above noted fact, I have reasons to believe that the income of Rs.3,11,80,117/- which was chargeable to tax has escaped assessment for the A.Y.2010-11 on account of failure on the part of assessee to disclose fully and truly all material facts necessary for the assessment of the A.Y.2010-11 and this is a fit case to issue notice u/s 148 for the A.Y.2010-11."*

It is urged that the assessee is doing no more than re-visiting the merits of the original scrutiny assessment which case especially barred from conducting afresh. Learned counsel relied upon the previous Division Bench's judgment in *Carlton Overseas Pvt. Ltd. vs. Income Tax officer & Ors.*, (2009) 318 ITR 295 and *Torrent Power S.E.C. Ltd. vs. Assistant Commissioner of Income-Tax*, (2017) 392 ITR 330 (Guj.), to contend that the rulings in *Commissioner of Income Tax vs. Kelvinator of India Ltd.*, 320 ITR 561 authorises review of the complete scrutiny only and only if tangible material is made available to the revenue. It is emphasised that these rulings of *Carlton* and *Torrent* (supra) have stated that a subsequent audit objection or audit reports of the Income Tax Department does not constitute objectionable material outside.

Learned counsel for the revenue argued that the re-assessment notice in this case is valid and that, the amount claimed on account of forex gain, could not have been an allowable expenditure, being revenue in nature. It was further stated that an accounting standard AS 11 required disclosure of such gains, as a revenue item and not as one falling in the capital stream.

*Carlton* (supra) emphasises reliance by the revenue on a subsequent audit report, cannot be considered as tangible material. The relevant extracts of that decision are as follows :

*“8. Ms. Prem Lata Bansal, learned counsel appearing for the Revenue has contended that audit party can on factual basis ask for reassessment and which has, therefore, been done in the present case. It is, however, admitted by her that a mere change of opinion does not permit action under section 147/148 of the Act.*

*9. We find that the arguments on behalf of the petitioner are well founded and it must succeed. The audit report merely gives an opinion with regard to the non-availability of the deduction both under section 80-IA was not deducted from the profits of the business while computing deduction under section 80HHC. Clearly, therefore, there was no new or fresh material before the Assessing Officer except the opinion of the Revenue audit party.*

*10. Since it is settled law that mere change of opinion cannot form the basis for issuing of a notice under section 147/148 of the Act, therefore, we do not propose to burden out judgment with the said judgments. In fact, as stated above, counsel for the Revenue does not dispute this principle of law.”*

This Court is of the opinion that *Carlton* (supra) concludes the issue in the present case; the audit objection merely is an information. As reiterated in *Kelvinator* (supra) by the Supreme Court, change of information is impermissible. Revenue clearly barred by provisions of Section 147/148 of the Act.

In view of the above discussion, the impugned re-assessment notice dated 30.03.2017, cannot be sustained. It is hereby quashed; all consequential proceedings issued and conducted pursuant to the said re-assessment notice are also hereby quashed.

Writ petition is disposed of in the above terms. Pending application also stands disposed of.

**S. RAVINDRA BHAT, J**

**A. K. CHAWLA, J**

**AUGUST 10, 2018**

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