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

\+ ITA 106/2019

THE PR. COMMISSIONER OF INCOME TAX -6..... Appellant
Through : Sh. Puneet Rai, Advocate.

versus

MOSER BAER INDIA LTD. ..... Respondent
Through : Sh. Aniket. D. Agrawal, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% 01.02.2019

The Revenue is aggrieved by the order of the Tribunal rejecting its appeal. The assessee had questioned the reassessment proceedings under Sections 147/148 of the Income Tax Act, 1961 [hereafter "the 1961 Act"] on the ground that the reasons to re-open the assessment proceedings for AY 2002-03 amounted to a second opinion or review of the previous view expressed.

The assessee was subjected to scrutiny proceedings under Section 143(3) of the Act and the original assessment was completed on 28.07.2004. Its claim under Section 37(1) for allowance of capital expenditure by way of royalty to the tune of ₹39,57,72,326/- in lieu of technical knowledge and depreciation of fixed assets was allowed. Later, reassessment proceedings were initiated on the premise that the scrutiny assessment originally completed, was in ignorance of a binding decision of Supreme Court in *Southern Switchgears Ltd. v. CIT* 1998 (232) ITR 359 (SC). The reassessment was completed and the amounts were added back.

The assessee appealed, both on merits and on the issue of reopening. The CIT(A) concurred with the view of the Assessing Officer (AO). However, the Tribunal, following the decision of the Supreme Court in *CIT v. Kelvinator of India Ltd.* 320 (ITR) 561 (SC) and other decisions was of the view that since this scrutiny assessment had gone into the taxability of amounts in question, the AO could not have revisited the same issue on the pretext that a binding decision was overlooked.

This Court is of the opinion that the impugned order is sound and reasonable and in accord with the judgment of the Supreme Court. Further, in somewhat circumstances, where reassessment proceedings were sought to be initiated on the ground of expenditure wrongly allowed in ignorance or overlooking *Southern Switchgears (supra),* this Court in *Xerox Modicorp Ltd. v. DCIT* 2013 (350) ITR 308 (Del) held that reassessment proceedings were unauthorised by law. No substantial question arises.

The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 01, 2019/ajk