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

\+ **ITA 459/2019**

PR. COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr.Raghvendra Singh, Sr. Standing Counsel.

versus

SBI CARD PAYMENT SERVICE PVT. LTD ..... Respondent

Through: Mr.Tushar Jarwal with Mr.Rahul Sateeja, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

<u>O R D E R</u>

% **21.08.2019**

1. This is an appeal by the Revenue against an order dated 3rd October 2018 passed by the ITAT in ITA No.2672/Del/2015 for the Assessment Year ('AY') 2004-05.

2. The question of law sought to be urged by the Revenue is whether the ITAT erred in holding the reopening of the assessment under Section 147 of the Income Tax Act, 1961 ('Act') on the basis of an audit objection to be invalid?

3. This Court has heard the submissions of learned counsel for the parties and also perused the impugned order.

4. The ITAT has after discussing the reasons for reopening of the assessment come to the conclusion that the basis for reopening was on account of change of opinion by the Assessing Officer ('AO'). In paras 9, 10 and 11 the ITAT observed as under:

> "9. Bare perusal of the reasons recorded apparently shows that initially the assessment was reopened to bring the taxable income of the assessee on two grounds, but all of sudden, the AO has proceeded to make the addition on third ground also, *"that the assessee has debited Rs. 1,38,86,548/- on actuarial basis towards liability in respect of reward points granted to cardholders under the "triple advantage reward points scheme "for which no reason has been recorded and any notice has been issued to the assessee ".*
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> 10. It is the categoric case of the assessee that so far as question of explaining the exclusivity Incentive of Rs 2,26,00,000/- from Visa International for two years and change of accounting policy during the year under assessment is concerned, both the facts have been disclosed by the assessee during original assessment proceedings and the same have been discussed in the assessment order passed u/s 143 (3) of the Act.
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> 11. When it is explained on record by the assessee that exclusivity incentive of Rs.2,26,00,000/- from Visa International for two years were disclosed in the return of income for AY 2004-05 and in AY 2005-06 to the extent of Rs.1,30,00,000/- each, there is no question of escapement of income. AO proceeded merely on the fact that the entire amount should have been added in AY 2004-05 which is not the case as per restricted covenant that, *"it is for two years and within this period, breach of provisions in terms of issuance of payment card or product of Visa competitors would entail refund of entire exclusivity incentives ".* When we peruse para 1 of the reasons recorded, it is apparently clear that the exclusivity expenditure incentive from Visa International was

for two years."

5. As regards the change in the accounting policy again the ITAT noted that the said already been decided in Para 2 of the assessment order completed under Section 143(3) of the Act and, therefore, on both grounds the AO has reviewed his own decision without having any new intangible material to reopen the assessment which is not permissible under law as it amounts to change of opinion.

6. This Court is of the view that the above conclusion of the ITAT suffers no legal infirmity in the facts and circumstances of the case. No substantial question of law arises. The appeal is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 21, 2019
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