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

+ W.P.(C) 13281/2018 & CM Nos.51647-48/2018

**DEDICATED FREIGHT CORRIDOR CORPORATION
OF INDIA LIMITED**

..... Petitioner

Through : Mr. Ved Jain, Mr. Kislaya
Parashar and Ms. Mekhala
Benny, Advs.

versus

**ASSISTANT COMMISSIONER OF
INCOME TAX**

..... Respondent

Through : Mr. Ruchir Bhatia, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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14.01.2019

Heard counsel for the parties.

The respondent income tax authorities have produced the record for consideration in the court.

The petitioner's complaint is with respect to the re-assessment notice issued to it under Sections 147/148. It complains that the Revenue has completely overlooked and ignored the material circumstance that the "reasons to believe", cite facts which could have been and were examined in the course of the original scrutiny assessment proceedings under Section 143(3) – for A.Y. 2011-12, completed on 30.12.2013.

The “reasons to believe” given in support of the re-assessment proceedings reads as follows :

**“REASONS FOR INITIATING PROCEEDINGS u/s 147
IN THE CASE OF M/s DEDICATED FREIGHT
CORRIDOR CORPORATION OF INDIA LTD. PAN :
AACCD4768M FOR THE ASSESSMENT YEAR 2011-12”**

The assessee had filed its original E-Return of income on 29.09.2011 declaring an income of Rs.9,45,82,120/-. The case was selected for scrutiny assessment under CASS and notice under section 143(2) was issued to the assessee on 31.07.2012. Assessment in this case u/s 143(3) was completed on 30.12.2013 at an assessed income of Rs.9,73,22,082/- after making following addition:

a) *Disallowance of Expenditure Rs.9,73,22,082/-*

On perusal of the assessment record it has been observed that the assessee had claimed and allowed with a TDS credit of Rs.86,70,299/- on interest on Mobilization advance (Accrued) income of Rs.8,73,76,657 /-. However, as per clause 13E and note 1 (c) of the Form 3CD and as well as from the documents available in the assessment records it has been revealed that this interest of Rs.8,73,76,657 /-has not been offered for taxation in the assessment year 2011-12 by treating the same as capital receipt. Thus, in view of the above stated provision of the Act, the credit of the TDS amounting to Rs.8670299/- should not have been allowed to the assessee.

"Section 199 of the Income Tax Act, 1961 provides that any tax deducted at sourced shall be treated as payment of tax on behalf of the person from whose income the deduction was made and credit shall be given to them for the amount so deducted in respect of the assessment year for which income is assessable."

On examination of the facts in light of the provision of section 199 of the Income Tax Act, 1961 it is found that the income in respect of the TDS claimed by the assessee has not been offered for taxation by the assessee being capital receipts. However as the assessee has claimed the TDS the income should have been offered for taxation and hence there is an underassessment of income of Rs.8,73,76,657/-.

The assessment/re-assessment proceedings in this case for A.Y 2011-12 pertains to period beyond 4 years but before the expiry of six years from the date of the issue of the notice.

In light of the above circumstances and facts of the case it I have the reason to believe that the income of Rs.8,73,76,657/- has escaped assessment as defined by section 147 of the Act for Assessment Year 2011-12. The Income Chargeable to tax has escaped assessment for this year by the reason of the failure on the part of the assessee to disclose-fully and truly all material facts. Therefore, it is a fit case for the issuance of notice u/s 148 of the Act for the financial year 2010-11 relevant to the assessment year 2011-12.

*-s/d-
DCIT, Circle-7(1). New Delhi”*

The record shows that the petitioner had disclosed all the relevant circumstances and facts relating to the claim and allowance of the TDS credit, in support of the mobilization advance interest accrued to it (to the extent of Rs.8,73,76,657 - on which the interest disclosed was Rs.86,70,229/-). Given these circumstances – which are

undeniable and are part of the original record, produced before the court, it is obvious that no material in the eyes of law i.e. what is described as “tangible material” outside of the record in the form of the fresh documents or information was received by the Revenue, authorizing a valid and legal re-assessment notice. The existence of such tangible material can be the only justification for a proper re-assessment notice in such circumstances inasmuch as the Revenue does not allege that the petitioner did not disclose any material fact. The material facts were part of the record. In the light of the judgment of the Supreme Court in *Commissioner of Income Tax v. Kelvinator of India Ltd.*, 320 ITR 561, this Court is of the opinion that the re-assessment notice cannot survive in the eyes of law. Consequently, the impugned re-assessment notice; all subsequent proceedings drawn pursuant to it as well as re-assessment order dated 08.12.2018 under Section 143(3) of the Act are quashed.

The writ petition is allowed in the above terms.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 14, 2019

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