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% 04.03.2011

Present: Ms. Prem Lata Bansal, Sr. Advocate with Mr. Deepak Anand, Jr. Advocate for the appellant/Revenue.
Mr. C.S. Aggarwal, Sr. Advocate with Mr. Prakash Kumar, Advocate for the respondent/assessee.

+ CM APPL. 4377/2011

For the reasons stated in the application, the delay of 21 days in refilling the appeal is condoned.

The application stands disposed of.

ITA 447/2011

This appeal pertains to the assessment year 2001-02. Reassessment order was framed by the Assessing Officer under Section 143 (3) on 22nd March, 2004. However, thereafter, notice was issued on 4th August, 2006 under Section 148 of the Income-Tax Act, (hereinafter referred to as 'the Act'), qua reassessment on the following grounds:-

- (i) The assessee had claimed renovation expenses on leased premises as revenue expenditure but the Assessing Officer wanted to treat the same as capital expenditure.
- (ii) The assessee had claimed loss on the repossessed assets under the head "administrative and marketing expenses". The AO stated that the assessee was not the owner and the assets were registered in the name of purchasers and, therefore, the assessee was not entitled to the aforesaid loss on repossessed assets.



- (iii) The assessee had claimed loss on account of forward contracts in foreign currency on revaluation at the end of the year which according to the Assessing Officer was not allowable.

On these grounds, the Assessing Officer observed that the income had escaped assessment due to failure on the part of the assessee to disclose truly and fully all material facts. Leading to the aforesaid issues, notice under Section 148 of the Act was issued. The reassessment was framed thereafter. The assessee preferred appeal thereagainst before the CIT (A) which was allowed by the appellate authority holding that the initiation of proceedings under Section 147 of the Act was contrary to law. Notice issued under Section 148 of the Act was quashed.

Finding of fact was arrived at by the CIT (A) that the assessee had disclosed truly and fully all material facts in respect of all the aforesaid three items and the Assessing Officer had duly examined the same while framing the original assessment order. It was thus a case of mere change of opinion according to the appellate authority and notice issued under Section 147 of the Act was beyond the period of four years could not have been issued in these circumstances.

The ITAT has upheld this order of the CIT (A) confirming the reasoning given by it and has also referred to the Full Bench judgment of this Court in the case of ***Kelvinator of India Limited Vs. CIT***, 256 ITR 01.



We have gone through the matter and heard the learned Senior Counsel for the Revenue as well as for the assessee. It could not be disputed that notice for reopening of assessment under Section 148 of the Act was issued after the expiry of four years and also that all the material particulars was supplied by the assessee while claiming the deductions in respect of the aforesaid three items. The record also shows that the Assessing Officer had raised queries about these items and had, thus, applied its mind. It would, therefore, be a case of change of opinion and in view of proviso to Section 147 of the Act, notice after the expiry of four years was untenable.

We do not find any merit in this appeal and no question of law arises and it is accordingly dismissed.

A handwritten signature in black ink, appearing to read 'A.K. Sikri'.

A.K. SIKRI, J.

A handwritten signature in black ink, appearing to read 'M.L. Mehta'.

M.L. MEHTA, J.

MARCH 4, 2011

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