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

% Judgment delivered on: 28.11.2017

\+ ITA 1060/2017 & CM No. 42859-60/2017

PR COMMISSIONER OF INCOME TAX, DELHI-2 ..... Appellant

versus

M/S. CHL LIMITED ..... Respondent

Advocates who appeared in this case:

For the Appellant(s) : Mr. Zoheb Hossain, Sr. Standing Counsel
.
For the Respondent(s) : None.

CORAM:-
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

S. RAVINDRA BHAT, J. (OPEN COURT)

1. The Revenue claims to be aggrieved by the order of the Income Tax Tribunal (ITAT) which has set aside the assessment framed. It contends that the reasoning with respect to untenability of re-assessment for the Assessment Year (AY) 2000-01, in the facts of this case, was not justified.

2. The assessee had filed its returns for the AY 2000-01 claiming certain income to be part of its returns had arisen under Section 80HHb. The assessment was completed under Section 143(3).

Subsequently, much later i.e. on 21.03.2007, the Revenue exercised its powers under Section 147/148, recorded the following reasons:-

> *"10. As regards assessment year 2000-01, Ld. Counsel submitted that for assessment year under consideration, reopening has been initiated beyond 4 years and the assessing officer has also alleged that assessee has failed to disclose fully and truly all material facts necessary for assessment. The reasons recorded have been placed at page 33 of paper book which reads as under:*
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> *The assessment in the case of M/s CHL Ltd., for the A. Y. 2000-01 was completed in March, 2003 determining the income at Rs. 1,04,56,040/-. On perusal of the records it is noticed that the assessee has claimed deduction u/s 80HHD amounting to Rs. 2191238/- which was allowed at the time of assessment completed u/s 143(3). It is seen that in the profit of the business commutated for the purpose of deduction u/s 80HHD, the interest income of Rs.6,54,23,22/- and license fee of Rs. 5,69,49,782/- were not reduced, which were required as per the provision of Section 80HHD as these receipts had direct nexus with business activities of the assessee i.e. running of the Hotel. After reducing the above mentioned receipts, the profits of the business of the assessee for the computation of deduction u/s 80HHD comes to negative finger and hence no deduction u/s 80HHD can be allowed to the assessee.*
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> *The assessee at the time of filing the return of income during the assessment proceedings failed to disclosed fully and truly all material facts necessary for completion of the assessment for the assessment year 2000-01. I, therefore, have reasons to believe that this amount of Rs.21,91,238/- represents income of the assessee chargeable to tax which has escaped assessment for the assessment year 2000-01."*

3. The additions made by the Assessing Officer were appealed against by the assessee. The CIT(A) confirmed the additions holding that the amounts brought to tax could not have been legitimately claimed as deduction under Section 80HHb. Upon further appeal, the ITAT allowed the assessee's contentions. The ITAT has reasoned that the AO's opinion, with respect to assessee's failure with respect to all material facts revealed, amounted to change of the opinion and that in the absence of any fresh material; the circumstances that for the previous assessment year (i.e. AY 1998-99) the additions made by the AO were accepted, could not stand. The ITAT's reasoning is as follows: -

> *"In the present case, as noted above, Assessing Officer was having before him all material facts that were necessary for the purposes of completing original assessment. The Assessing Officer's recording that the assessee has failed to disclose all material facts necessary for completion of assessment without pointing out as to what was the material that was not disclosed. It is a bland statement which remains unsustainable. The reassessment was not passed on only fresh material. The material on record was only examined and used for recording reasons for reopening. The reopening was merely a change of opinion on the same set of facts and material. No fresh material came in to the possession of the Assessing Officer warranting reopening. Hence the reopening is bad in law. We, therefore, set aside and quash the notice u/s 148 and assessment order for A.Y. 2000-01. We, therefore, do not find any necessity to dwell upon the merits of the case.*
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> *Accordingly, appeal filed by the assessee stands allowed for A. Y 2000-01."*

4. This Court is of the opinion that the conclusion recorded by the ITAT does not call any interference. The regular assessment was completed, in this case, on 31.03.2003. The regular assessment for AY 1998-99 was completed on 27.03.2001. In these circumstances, the assessee could not be faulted for having accepted the additions made for the previous assessment year (AY 1998-99); though later, given that the returns were filed on 29.11.2000 for the assessment year (AY 2000-01) in the present case.

5. No substantial question of law arises. The appeal is dismissed.

S. RAVINDRA BHAT
(JUDGE)

SANJEEV SACHDEVA
(JUDGE)

NOVEMBER 28, 2017
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