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

+ **W.P.(C) 6375/2015 & CM No.11601/2015**

THE MOTOR AND GENERAL FINANCE LTD. ..... Petitioner
Through: Mr. Satyen Sethi and Mr. Arta Trana Panda, Advocates.

Versus

INCOME TAX OFFICER, WARD 25(1), & ANR. ..... Respondents
Through: Mr. Ruchir Bhatia and Mr. Puneet Rai, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **18.01.2017**

1. The petitioner/assessee in these proceedings under Articles 226/227 of the Constitution challenges a reassessment notice under Sections 147/148 of the Income Tax Act, 1961 (hereinafter to be referred as 'the Act') proposing to reopen the completed assessment for Assessment Year (AY) 2010-11.

2. In the return filed on 01.10.2010, the concerned assessment years, the petitioner/assessee had set off unabsorbed depreciation to the tune of ₹8,76,43,790/-, of the AY 2001-02. After notice was issued under Section 143(2) of the Act, the scrutiny assessment was framed, accepting 'nil' income. The impugned reassessment notice reads as follows:-

6

"Reasons for the belief that income has escaped assessment in the case of M/s. The Motor & General Finance Ltd. (PAN-AAACT2356D) for assessment year 2010-11.

The assessee company has claimed and allowed setting off of unabsorbed depreciation of Rs.8,76,43,790/- of the assessment 2001-02 for assessment year 2010-11. The unabsorbed depreciation of the assessment year 2001-02 was carried forward and set off beyond eight years. Therefore, I have reason to believe that income of Rs.8,76,43,790/- has escaped assessment for assessment year 2010-11."

3. The petitioner contends that 'reasons to believe' cannot stand the test of principles enunciated by this Court as those governing valid reopening of assessment by the Supreme Court in ***Commissioner of Income Tax Vs. Kelvinator of India Ltd. [2010] 320 ITR 561***. It is submitted that besides the reassessment notice is also unsustainable because it proceeds on the understanding that set off of unabsorbed depreciation could not be claimed, in respect of past assessments, when the depreciation occasioned first prior to the amendment which was brought into force on 01.04.2002 to Section 32(2) of the Act. In so saying, the petitioner relies upon the Gujarat High Court ruling in ***General Motors India Private Limited Vs. Commissioner of Income Tax [2013] 354 ITR 244***. This decision was apparently followed by a latter judgment of the Gujarat High Court and of a Bombay High Court.

4. The Revenue, on the other hand, submits that the reopening of assessment was occasioned by an audit objection and contends that the law is applicable at the relevant time posited that depreciation could be carried

further only for eight years. Since the eight years period ended before the AY 2010-11, the assessee could not have claimed the benefit at all. Under these circumstances, counsel for the Revenue submits that the reassessment notice is valid and cannot be impeached.

5. The ***Kelvinator's*** case (*supra*) is as conclusive as any other precedent can be as to the considerations that can weigh with the Revenue for validly reopening any concluded assessment that the assessee had claimed a set off in terms of the then existing Section 32(2) of the Act in 2010-11 is not a disputed fact. The view taken by the Assessment Officer, apparently quite correctly in the light of the subsequent ruling of the Gujarat High Court, was that such carry forward of the depreciation for the past years was not limited by the pre-existing Section 32(2) of the Act, which ceased to be on the Statute Book with effect from the date it was amended i.e. 01.04.2002.

6. In these circumstances, in the absence of any tangible material, which can be the only basis for reopening a completed assessment, the Revenue could not have issued the impugned notice. As to the applicability of ***General Motors India Private Limited's*** case (*supra)*, the Court is of the opinion that the view taken is sound and an added factor inhibited the Revenue from reopening the assessment. The benefit of carrying forward the depreciation was, in one sense, limited by the pre-existing ruling that can be done for eight years. All that amendment did with effect from 01.04.2002 was to remove the cap which meant that the previously limited benefit was now not subjected to such restrictions.

7. In the light of the foregoing discussion, the impugned notice cannot be sustained. It is hereby quashed alongwith all proceedings emanating therefrom. The writ petition is allowed in the above terms. The application bearing CM No.11601/2015 also stands disposed off.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

JANUARY 18, 2017
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