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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 397/2017

PR. COMMISSIONER OF INCOME TAX-6,
NEW DELHI

..... Appellant

Through : Mr. Arun Khatri, Advocate.

versus

NBCC LTD.

..... Respondent

Through : None.

WITH

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ITA 425/2017

PR. COMMISSIONER OF INCOME TAX-6,
NEW DELHI

..... Appellant

Through : Mr. Arun Khatri, Advocate.

versus

NBCC LTD.

..... Respondent

Through : None.

**CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

ORDER

11.07.2017

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CM APPL. No. 22436/2017 (Exemption) in ITA 425/2017

1. Allowed, subject to all just exceptions.

CM APPL. No. 22437/2017 (delay in re-filing) in ITA 425/2017

2. For the reasons stated in the application, the delay in re-filing this appeal



is condoned. The application is disposed of.

ITA 397/2017 & ITA 425/2017

3. These two appeals by the Revenue are directed against the order dated 27th October, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in CO No. 146/Del/2012 and ITA No. 1559/Del/2013 for the Assessment Year ('AY') 2003-04.

4. The Revenue is aggrieved that the ITAT has allowed the cross-objections filed by the Assessee and held that the re-opening of the assessment for the AY in question under Section 147 of the Act was bad in law.

5. The ITAT has in the impugned order in para 4.1, after setting out the reasons for re-opening of the assessment, observed as under:

“4.1. A perusal of the above reasons demonstrate that the original assessment was completed u/s 143(3) of the Income Tax Act, 1961 (the Act) and the assessment is reopened beyond the period of four years and there is no fresh tangible material with the Assessing Officer (A.O.) based on which the reasons for reopening have been recorded. The A.O. states that on a perusal of records of the assessee, he observed that the assessee has debited Rs.3,12,66,000/- as uncertified value of work. Such reopening, in the absence of fresh tangible material is not permitted in law.”

6. Learned counsel for the Revenue has not been able to dispute that there was no fresh tangible material to justify the re-opening of the assessment which, in the first place, took place under Section 143(3) of the Act. The statement of accounts, balance sheet etc. were already available with the AO



when the assessment took place in the first instance. The reasons recorded for re-opening of the assessment merely proceeded to further analyse the same documents to arrive at a different conclusion. Clearly, therefore, this was a case of change of opinion with no fresh tangible material.

7. Given the settled legal position, the Court is unable to find any legal infirmity in the conclusion arrived at by the ITAT. No substantial question of law arises.

8. These appeals are, accordingly, dismissed.

A handwritten signature in black ink, appearing to be 'S. Muralidhar'.

S.MURALIDHAR, J.

A handwritten signature in black ink, appearing to be 'Prathiba M. Singh'.

PRATHIBA M. SINGH, J.

JULY 11, 2017

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