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

+ ITA 141/2022 & C.M.Nos.21224-21225/2022

PRINCIPAL COMMISSIONER OF INCOME TAX CIRCLE 2

..... Appellant

Through: Ms.Vibhooti Malhotra, senior
standing counsel with Mr.Shailendra
Singh, Advocate.

versus

**M/S. CENTRAL COTTAGE INDUSTRIES CORPORATION OF
INDIA LTD**

..... Respondent

Through: None

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Date of Decision: 04th May, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present Income Tax Appeal has been filed challenging the Order dated 31st August, 2019 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1781/Del/2015 for the Assessment Year 2007-08.
2. Learned counsel for the Appellant states that the ITAT has erred in not considering the fact that the original assessment order passed under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') did not address or express any opinion on the issue of rent payable on the basis of which reassessment had been initiated.
3. She further states that the ITAT has erred in setting aside the

impugned assessment proceedings on the ground of change of opinion, even though no opinion had been expressed during scrutiny and, thus, the question of change of opinion did not arise.

4. It is settled law that post 01st April, 1989, the Assessing Officer can issue notice for reassessment provided he/she has 'reason to believe' that the income has escaped assessment. However, 'reason to believe' does not mean a mere change of opinion as the Assessing Officer has no power to review but he/she has the only power to re-assess.

5. The Supreme Court in *Commissioner of Income Tax, Delhi vs. Kelvinator of India Limited, (2010) 2 SCC 723* has held that the concept of 'change of opinion' is an in-built test to check abuse of power by the Assessing Officer. It has further held that after 01st April, 1989, the Assessing Officer has power to reopen, provided there is tangible material to come to the conclusion that there is escapement of income from assessment.

6. In the present case, during original assessment proceedings, the Assessing Officer had issued notices to the assessee seeking reasons for decline in the gross profit. The Respondent/assessee vide replies dated 22nd January, 2009 and 09th February, 2009 had stated that decline in gross profit was due to the rent of Mumbai Branch premises and rent of 'A Barracks' and provisions for pay revision.

7. Subsequently, the Assessing Officer had issued notice under Section 154 of the Act on the issue of 'Other Provisions'. The Respondent/assessee, in response to said notice had submitted a break-up of 'Other Provisions', which included the rent of 'A Barracks' of Rs. 4.19 Crores.

8. Keeping in view the aforesaid facts, this Court is of the view that the issue of rent of 'A Barracks' was within the knowledge of the Assessing

Officer when he had passed the original assessment order as well as the subsequent order under Section 154 of the Act. Consequently, this Court is in agreement with the opinion of the ITAT that reassessment proceeding in the present case was based on a change of opinion and the same, therefore, cannot be sustained.

9. Accordingly, no substantial question of law arises for consideration in the present appeal and the same is dismissed along with pending applications.

MANMOHAN, J

DINESH KUMAR SHARMA, J

MAY 04, 2022
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