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

+ ITA 919/2017, CM APPL.39108-39110/2017

PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-2

..... Appellant

Through: Mr. Rahul Kaushik, Sr. Standing
Counsel.

versus

BHARTI AIRTEL LTD.(FORMERLY BHARTI CELLULAR LTD)

..... Respondent

Through: Ms. Kavita Jha with Ms. Shivani
Khandekar, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

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31.10.2017

1. The Revenue is aggrieved by the order of the ITAT which set aside the re-assessment order made by the Assessing Officer.

2. The facts are that the assessee filed the return for AY 2002-2003. This was assessed under the normal provisions of the Income Tax and at book profit of ₹1,05,53,29,112 under Section 115JB through an order finalized under Section 153 (3). This was after the Assessing Officer considered the claim by the assessee to treat software expenses to the tune of ₹5.44 crores as administrative and other expenditure. The assessment was sought to be reopened and finalized under Section 147/148. The CIT (A) held that the

reassessment concluded was contrary to the provisions of Section 147/148 as it amounted to change of opinion. The ITAT affirmed that finding.

3. The Revenue urges that on the merits the issue of treatment of such software expenses as revenue expenditure is pending before this Court under Section 260A for the previous years.

4. This Court is of the opinion that the ITAT's impugned order is unexceptionable because it is premised upon the circumstance that in the absence of any fresh tangible material, it was not open, on mere re-appreciation of the existing circumstances, to reopen the concluded scrutiny assessment. The ITAT's reasoning cannot, therefore, be faulted. No question of law arises. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

OCTOBER 31, 2017

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