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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 47/2016

COMMISSIONER OF INCOME TAX-IV

..... Appellant

Through: Mr Ashok K. Manchanda, Senior
Standing Counsel with Ms Vibhooti Malhotra,
Junior Standing Counsel.

versus

GALLIUM INDUSTRIES LTD.

..... Respondent

Through: Mr Rohit Kumar Gupta, Advocate.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE VIBHU BAKHRU

ORDER

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27.01.2016

CM No.961/2016

1. For the reasons stated in the application, the delay in re-filing the appeal is condoned.

2. The application stands disposed of.

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3. The Revenue has appealed against the order dated 18th June, 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.762/Del/2013 for the Assessment Year ('AY') 2008-09.

4. The Revenue is aggrieved by the impugned order of the ITAT which upholds the order of the Commissioner of Income Tax (Appeals) [CIT(A)] dated 27th November, 2012 whereby the addition sought to be made by the

Assessing Officer (AO) to the income of the Assessee in the sum of Rs.2,01,38,824/- by increasing the gross profit (GP) ratio by 4% was directed to be deleted.

5. In making the addition, the AO noted that whereas the GP ratio for the AY in question i.e. 2008-09 was 34.72% in the preceding two AYs, i.e. A.Y. 2007-08 and 2006-07, it was 39.65% and 43% respectively.

6. There were two broad grounds on which the AO proceeded to increase the GP ratio by 4%. One was that the stock purchased from M/s Kithania Sales Pvt. Ltd. was not entered in the year of purchase. The CIT(A) had accepted the explanation offered by the Assessee that since the goods were not in accordance with its specifications, they were not entered in the stock as well as in the purchases. The Assessee had also asked the supplier to take the stock back.

7. As regards the second ground for revising the GP ratio, after rejecting the books of accounts of the Assessee, the CIT(A) noted that the AO had not given the details of the manner in which any income was not booked or any expenses over booked. In particular, it was noted by the CIT(A) that the procedure that had to be adopted under Section 144 of the Act for rejecting the books of accounts was not adopted by the AO.

8. On both the above aspects, the ITAT has concurred with the CIT(A). Although, learned counsel for the Revenue urged that there was sufficient basis for the AO to have rejected the books of accounts of the Assessee, the Court is unable to be persuaded to hold that the factual findings returned by

the CIT(A), concurred with the ITAT, are perverse and require any interference.

9. No substantial question of law arises. In the circumstance, the appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 27, 2016
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