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

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\+ **ITA 2/2016**

COMMISSIONER OF INCOME TAX-2 ..... Appellant
Through: Mr Kamal Sawhney, Senior Standing Counsel and Mr Raghvendra Singh, Junior Standing Counsel, Mr Shikhar Garg and Mr Sharad Agarwal, Advocates.

versus

CENTRAL WAREHOUSING CORPORATION LTD. ..... Respondent
Through: Mr Mayank K. Nagi, Advocate.

AND

3.
\+ **ITA 3/2016**

COMMISSIONER OF INCOME TAX-2 ..... Appellant
Through: Mr Kamal Sawhney, Senior Standing Counsel and Mr Raghvendra Singh, Junior Standing Counsel, Mr Shikhar Garg and Mr Sharad Agarwal, Advocates.

versus

CENTRAL WAREHOUSING CORPORATION LTD. ..... Respondent
Through: Mr Mayank K. Nagi, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% **08.01.2016**

CM No.229/2016 in ITA 3/2016

1. Allowed, subject to all just exceptions.

2. The application stands disposed of.

CM No.228/2016 in ITA 2/2016
CM No.230/2016 in ITA 3/2016

3. For the reasons stated in the applications, the delay in re-filing the appeals is condoned.

4. The applications stand disposed of.

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ITA 3/2016

5. These are appeals by the Revenue against the impugned common order dated 2nd June, 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA Nos.215 & 216/Del/2013 for the Assessment Years (AYs) 2005-06 and 2004-05 respectively.

6. This is the second round litigation involving the same Assessee. The question sought to be urged by the Revenue is whether the ITAT was right in holding that reopening of assessment in the case of the aforementioned AYs was invalid?

7. Incidentally, for AY 2002-03, this Court in its decision ***CIT v. Central Warehousing Corporation (2015) 58 taxmann.com 225 (Delhi)*** declined to frame a similar question that was urged and dismissed the Revenue's appeal after observing that the question of failure to disclose truly the material facts was essentially one of fact.

8. In the present case, it is not as if the relevant material was not disclosed by the Assessee in the first round of assessment. As far as AY 2005-06 is concerned, it is sought to be urged is that while framing the original assessment, the Assessing Officer (AO) had inadvertently failed to notice that accrued income of the Assessee from the disposal of stocks in the bonded warehouse had escaped assessment. As noticed by the ITAT, the original assessment was framed under Section 143(3) of the Act and a specific query was raised by the AO to the effect: "why income from bonded warehouse be not accounted for on accrual basis?" and had been clarified by the Assessee in writing. In objecting to the re-opening of the assessment the Assessee pointed out: "As a matter of fact, the assessing officer had called (for) certain clarifications and the assessee had furnished the required clarifications, where-after this issue was dropped by him." The Court concurs with the ITAT that the re-opening of the assessment by the AO for

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AY 2005-06 was based on a change of opinion and, therefore, impermissible in law.

9. As regards AY 2004-05, the reopening of assessment was sought to be made on the basis that the Assessee had claimed exemption in respect of its divided income to the extent of Rs.4,37,82,189. According to the AO, the audit scrutiny revealed that proportionate management and administrative expenses attributable to the above income were not deducted in computing admissible exemption. After deduction of proportionate management and administrative expenses of Rs.1,47,25,630, the allowable deduction worked out to Rs.2,90,56,559/- as against Rs 4,37,82,189. The AO concluded that this mistake had resulted in under-assessment of income to the extent of Rs.1,47,25,630/- and as a result there was a short levy of tax of Rs.60,75,243/- including interest. The re-opening was proposed in view of Section 14A of the Act.

10. As pointed out by the learned counsel for the Assessee, and as noted by the Commissioner of Income Tax (Appeals) in the order dated 15th October, 2012 for the AY 2004-05, in the original assessment order dated 29th December 2006 under Section 143 (3), the AO had "elaborately discussed

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Section 14A of the Income tax Act and disallowed a sum of Rs.1,59,03,771. A questionnaire was also issued by the AO vide questionnaire dated 19.9.2006 specifically asking a query why the proportionate administrative and management expenses incurred for earning the exempted income should not be disallowed under section 14A. The assessee Corporation had replied the questionnaire vide letter dated 3.10.2006 which was taken into account and the AO had proceeded to proportionately disallowed a sum of Rs.1,59,03,771/- under Section 14A." Further, the said addition was challenged before the CIT(A) who by order dated 28th December 2007 gave relief of Rs.1,54,03,771.

11. In the circumstances, the conclusion reached by the CIT (A) that the AO was by seeking to reopen the assessment for AY 2004-05, reviewing his earlier order, cannot be faulted.

12. No substantial question of law arises. The appeals are dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 08, 2016/MK