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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ITA 763/2015**

PR. COMMISSIONER OF INCOME TAX- 9 ..... Appellant
Through Mr Zoheb Hossain, Junior Standing Counsel with Mr Dileep Shivpuri, Senior Standing Counsel.

versus

ZEON LIFESCIENCES LIMITED ..... Respondent
Through Mr Prakash Kumar, Advocate.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

<u>O R D E R</u>
% **24.02.2016**

1. This is an Appeal by the Revenue against the order dated 27th March, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1650/DEL/2010 relating to the Assessment Year ('AY') 2006-07.

2. The Assessee filed a return of income on 15th December 2006 for AY 2006-07 declaring taxable income at 'Nil'. Tax was paid on the Book Profit of Rs. 1,01,40,312/- under Section 115JB of the Income Tax Act, 1961 ('Act'). The Assessee had two units for determination under Section 80IC of the Act, namely, (i) M/s Mahaan Multipack and (ii) M/s Mahaan Healthcare.

3. During the course of the assessment proceedings, the Assessing Officer ('AO') disallowed deductions under Section 80IC of the Act holding that Job Work charges received by Mahaan Healthcare Unit was not a manufacturing

activity in terms of Section 80IC of the Act. The fixed minimum guarantee amount received by Mahan Multipack from Coco-Cola India Pvt. Ltd. was held ineligible for deduction under Section 80IC of the Act. Further, it was observed that the Assessee had not claimed any depreciation as per Companies Act, 1956 in M/s Mahaan Multipack whereas depreciation as per the Act of Rs. 43,80,673/- had been claimed in the computation of the assessable income. The explanation offered by the Assessee, that there was no production activity at this unit as production has been suspended by the Coco-Cola India Pvt. Ltd. and that only a minimum fixed job charges of Rs. 65,25,300/- was received, was rejected by the AO.

4. By the order dated 24th December 2008, the AO disallowed the deductions under Section 80IC of the Act and completed the assessment under Section 143 (3) of the Act assessing the total taxable income at Rs. 52,55,750/-.

5. By the order dated 29th January 2010, the Commissioner of Income Tax (Appeals) ['CIT (A)'] allowed the appeal of the Assessee by holding that the job work charges had to be treated as manufacturing activity and separate books of accounts were not required to be maintained for that purpose. As regards Mahan Multipack, the CIT (A) held that the fixed minimum guarantee amount received by the said Unit from Coco-Cola India Pvt. Ltd. would contribute to its profits and would be eligible for deduction under Section 80IC of the Act. The Assessee's claim to depreciation was also allowed by holding that the Assessee had only to keep its unit ready for production at all times. The decision of this Court in ***Capital Bus Service***

(P.) Ltd. v. Commissioner of Income-Tax [1980] 123 ITR 404 (Del) was followed. The Revenue then filed an appeal before the ITAT which by the impugned order has upheld the order of the CIT (A).

6. In the present Appeal, the following questions have been urged by the Revenue:

> i. Whether the ITAT erred in law in allowing deduction under section 80IC in respect of minimum guarantee of Rs. 65,25,300/- ignoring the ratio laid down in the case cited as (2013) 356 ITR 222 (Delhi) ?
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> ii. Whether the ITAT erred in law in allowing depreciation of Rs. 43,80,673/- for passive use of a unit that had not worked for even a single day in the entire financial year?

7. As far as the amount of Rs. 65,25,300 received by Mahan Multipack from Coco-Cola India Pvt. Ltd as minimum guarantee is concerned, the learned counsel for the Revenue referred to the decision of this Court in ***Pine Packaging P. Ltd. v. Commissioner of Income Tax (2013) 356 ITR 222 (Delhi)*** in which it was held that the standing charges paid to the Assessee therein for failure to produce did not qualify for deduction under Section 80IC of the Act. Learned counsel for the Assessee does not dispute the above legal position.

8. Consequently, question (i) is answered in the affirmative, i.e., in favour of the Revenue and against the Assessee. The deduction in respect of the amount of Rs. 65,25,300/- received by Mahan Multipack from Coco-Cola India Pvt. Ltd as minimum guarantee is disallowed. The impugned order of

the ITAT on this issue is set aside and the corresponding order of the AO on the issue is affirmed.

9. As regards question (ii), the legal position has been made clear by the decision of this Court in ***Capital Bus Service (P.) Ltd. v. Commissioner of Income-Tax*** (*supra*) which has been reiterated in ***NTPC v. CIT (2012) 211 Taxman 505 (Del)***.

10. Consequently, the said question is answered in the negative i.e. against the Revenue and in favour of the Assessee.

11. The appeal is disposed of in the above terms.

S.MURALIDHAR, J

VIBHU BAKHRU, J

FEBRUARY 24, 2016
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