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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 11th November, 2017

Decided on: 7th December, 2017

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ITA No. 171/2012

COMMISSIONER OF INCOME TAX, DELHI

...Appellant

Through: Mr. Mr. Rahul Chaudhary and Mr.
Sanjay Kumar, Advocates.

versus

MARUTI SUZUKI INDIA LTD.

..... Respondent

Through : Mr. S. Ganesh, Senior Advocate with
Ms. Kavita Jha, Mr. S. Sukumaran,
Mr. Anand Sukumar, Mr. Bhuwan
Dhoopar, Ms. Roopali Gupta and
Mr. Bhupesh Pathak, Advocates.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

JUDGMENT

07.12.2017

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Dr. S. Muralidhar, J.:

1. This is an appeal by the Revenue against the impugned order dated 19th August 2011 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.1927/Del/2010 for the AY 2005-06.

2. While admitting this appeal on 14th May 2013, the following questions of

law were framed for consideration:

(1) Whether on the facts and in circumstances of case, the ITAT was correct in law in deleting the addition/ disallowance to the extent of Rs. 2,08,59,280/- on custom duty on import of components for export purpose?

(2) Whether on the facts and circumstances of case, the ITAT was correct in law in deleting the addition/disallowance relating to custom duty on inventory held in closing stock to the extent of Rs. 23,68,09,186/-?

(3) Whether on the facts and circumstances of case, the ITAT was correct in law in deleting the addition of Rs. 4,65,02,993/- made by AO on account of alleged excess consumption of raw material and components?

(4) Whether on the facts and circumstances of case, the ITAT was correct in law in deleting the addition on account of sales tax subsidy of Rs. 16,04,07,733 made by AO treating it to be revenue receipt?"

3. As far as Questions 1, 2 and 3 are concerned, in view of the decision rendered today in ITA 250 of 2005 in respect of the same Assessee for AY 1999-2000, they are answered in the affirmative, i.e. in favour of the Assessee and against the Revenue.

4. Question (4) pertains to sales tax subsidy being added to the income of the Assessee by treating it as revenue expenditure. With regard to the very same sales tax subsidy provided in the State of Haryana, pursuant to the Scheme in force in the said State during the AY in question, this Court, in ***Commissioner of Income Tax v. Johnson Matthey India (P) Limited*** (order dated 13th March 2015 in ITA No. 193 of 2015) answered the said issue in favour of the Assessee and against the Revenue. In that decision, this Court

relied on the decisions of the Supreme Court in *Sahney Steel and Press Works Limited v. CIT* [1997] 228 ITR 253 (SC) and *CIT v. Ponni Sugars and Chemicals Ltd* (2008) 306 ITR 392 (SC).

5. The decision of this Court in *CIT v. Johnson Matthey India (P) Ltd.* (supra) was not appealed against by the Revenue. Further, it is pointed out by the Assessee that the decision of this Court in *Commissioner of Income Tax v. Bhushan Steel Pvt. Ltd.* [2017] 398 ITR 216 (Del), which has been relied upon by the Revenue, is in appeal before the Supreme Court in S.L.P.(C) No. 30728-30732 of 2017 and has been stayed by that Court.

6. Since the sales tax subsidy under the same scheme that was the subject matter of *CIT v. Johnson Matthey India (P) Ltd* (supra) is also the subject matter of the present appeal, Question (4) is answered in the affirmative, i.e. in favour of the Assessee and against the Revenue.

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

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

DECEMBER 07, 2017

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