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

\+ **ITA 31/2005**

MARUTI UDYOG LTD. ..... Appellant

Through: Mr.S.Ganesh, Sr.Advocate with Mrs.Kavita Jha, Mr.Anand Sukumar, Mr.Bhupesh Kumar Pathak, Advocates.

versus

COMMISSIONER OF INCOME TAX DELHI ..... Respondent

Through: Mr.Ruchir Bhatia, Standing Counsel

CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% **16.02.2018**

C.M.No.1322/2018 (Exemption)

1. Allowed subject to all just exceptions.

Rev.Pet.No.26/2018(by the appellant for modification) in ITA 31/2005

2. Notice. Mr. Ruchir Bhatia, the learned Senior Standing Counsel accepts notice for the non-applicant/Appellant.

3. This is a petition by the Assessee/Appellant seeking review of the judgment dated 7th December, 2017 passed by this Court in ITA No. 31/2005 to a limited extent concerning the software expenditure of Rs. 48,54,526/- incurred by the Assessee in Assessment Year (AY) 1999-2000.

4. The Assessee states that it expended a total sum of Rs.165,78,277/- on software of which Rs.25,87,255/- related to upgradation and maintenance of

the software and, therefore, was not in dispute. The balance amount of Rs. 1,39,91,022/-, according to the Assessee, related to purchase of new software of which Rs.91,76,496/- was for ERP Application Software and the balance Rs.48,54,526/- related to various other software purchased for business purpose.

5. The ITAT in its impugned judgment, which was in appeal before this Court, disallowed the entire sum of Rs. 1,39,91,022/- by treating it as a capital expenditure whereas the contention of the Assessee was that it was revenue expenditure. Question (ix) formulated by this Court in the appeal was whether the ITAT was in error in not allowing the entire software expenditure of Rs. 1,39,91,022/- which the Assessee claimed to be a revenue expenditure.

6. In the judgment dated 7th December 2017, this Court has, while reversing the order of the ITAT, agreed with the Assessee that the expenditure of Rs. 91,36,496/- was indeed revenue expenditure. Further, the Court agreed with the Assessee that although the said expenditure related to the earlier AYs, since it was claimed for the first time in the previous year relevant to the AY 1999-2000 and not in any earlier AY, it was allowable as such in AY 1999-2000.

7. Even though in its judgment dated 7th December 2017 this Court answered Question (ix) in favour of the Assessee in the affirmative, the discussion in the judgment was confined to the sum of Rs. 91, 36, 946 which pertained to expenditure incurred in the earlier AYs but claimed in the AY

in question i.e. AY 1999-2000. As rightly pointed out by the Assessee, this Court failed advert to the balance software expenditure of Rs. 48,54,526/- which, it is asserted by the Assessee, was incurred in AY 1999-2000 itself.

8. Mr. S. Ganesh, learned Senior Counsel appearing for the Assessee, clarifies that the said sum of Rs. 48,54,526/- was indeed spent on software in the previous year relevant to AY 1999-2000 and that this fact was never in dispute.

9. In that view of the matter, the Court modifies the judgment dated 7th December, 2017 to the limited extent of clarifying that the sum of Rs. 48,54,526 expended by the Assessee on software is also revenue expenditure and is also allowable as such in AY 1999-2000. Consequently, the entire sum of Rs. 1,39,91,022/- as claimed by the Assessee is allowable as software expenditure in the AY 1999-2000. The Court's answer to Question No. (ix) in favour of the Assessee in the judgment dated 7th December 2017 will be understood accordingly.

10. The review petition is disposed of.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

FEBRUARY 16, 2018
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