$~56

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

\+ ITA 432/2005

THE COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr. Asheesh Jain with Mr. Shahrukh Ejaj, Advocates.

versus

M/S SALORA INTERNATIONAL LTD. ..... Respondent

Through: Mr. Salil Kapoor with Mr. Sumit Lalchandani, Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

O R D E R

% **05.12.2017**

1. This Court is informed, at the outset, by counsel for the assessee that the questions of law i.e. with respect to the exercise of power under Section 263, has been rendered academic**.** In this context, it is submitted that the ITAT itself had noted in its impugned order of 14.01.2005 that the AO, pursuant to the directions of the CIT, had, on merits, not added the amounts, which was the subject matter of the notice under Section 263 except in relation to royalty.

The impugned order records as follows:-

"The learned counsel pointed out that in pursuance to the impugned order of the learned CIT, the learned Additional CIT, Range-9, New Delhi has passed the order dated 22.03.2004 wherein no disallowances or additions have been made on any of the points stated

by the learned CIT in his notice, except in relation to royalty. While the assessee had claimed the royalty as revenue expenditure, the learned Additional CIT held otherwise. There was no justification to hold that the expenditure was not of revenue character. In the latter assessment years, viz. 2001-2002 also apart from disallowance of royalty expenditure no addition had been made. Therefore, at best the learned CIT could allege that the assessment order was cryptic. The same could not be made the basis for holding that order to be erroneous. Reliance in this respect was placed on the judgment of Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Chawla Trunk House, 139 ITR 182 (P&H).

2. In the light of the above facts, the Court is of the opinion that the question of law does not arise. In any event, the permissibility or otherwise of exercise of power under Section 263, in the said circumstances, is largely fact dependent and, in any case, the question is left open if any additions were made during the concerned year.

3. The question of law has therefore been rendered infructuous.

4. The appeal is dismissed.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

DECEMBER 05, 2017
st