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

+ ITA 487/2016, C.M. APPL.45139-45140/2016

PR. COMMISSIONER OF INCOME TAX-8 Appellant
Through : Ms. Vibhooti Malhotra, Advocate.

versus

INDOMAG STEEL TECHNOLOGY LTD. (NOW KNOWN AS
SMS IRON TECHNOLOGY PVT LTD) Respondent
Through : Sh. Rajan Bhatia, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **13.02.2017**

1. In this appeal under Section 260A of the Income Tax Act, 1961, the Revenue is aggrieved by an order of the Income Tax Appellate Tribunal ("ITAT"), which sets-aside the additions made for AY 1997-98, in reassessment proceedings.

2. The assessee provides technical consultancy services in the ferrous and non-ferrous sector. It was engaged to provide expert services by the setting-up of the Vishakapatnam Steel Plant ("VSP") and certain other steel plants. The contracts in question stipulated the timelines within which its services were to be completed, in default of which it had to incur specified liquidated damages. It contended and showed that from its running bills, amounts towards liquidated damages claimed were in fact deducted by its client for various assessment years. It also established the linkage between the debt and

the corresponding reduced payments made by the client. However, it claimed these to be a provision in the return and the documents submitted by the Assessing Officer (“AO”). For the previous AY 1996-97, the matter had travelled to the Mumbai Bench of the ITAT which allowed relief by its order dated 12.03.2008 (in ITA 4057/Mum/2000 and connected cases). The AO, who had initially accepted the assessee’s contentions for AY 1997-98, issued reassessment notice and proceeded to finalise the order disallowing the sum of ₹4,06,87,253/-. The assessee carried the matter in appeal which allowed the assessee’s pleas. The relevant portion of the ITAT’s order are as follows:

“5. We have heard both the parties and perused the records available with us, especially the earlier orders of the Tribunal decided in favour of assessee in assessee’s own case. We find that in the assessment years 1996-97 and 1998-99, the Tribunal vide order dated 12.3.2008 passed in ITA No.4057/Mum/2000 and ITA No.5367/Mum/2001 has adjudicated the similar issue in assessee’s own case in its favour. For the sake of convenience, the relevant findings of the Tribunal from para 4.3 to 4.7 at pages 12& 13 are reproduced below:

4.3 The third ground raised by the assessee is that the CIT(A) has erred without appreciating the fact of the case in confirming the disallowance of Rs.62,36,462/- out of “Provision for Contractual Obligation” claimed by the assessee.

4.4 According to the assessee, the amount represented the remaining cost to be incurred at the time of completion of the contract. According to the assessee, the excess or shortfall in the amount is adjusted on final acceptable of the Bill by the customers.

4.5 The assessee had claimed an amount of Rs.2,63,71,552/- on account of provision for contractual obligation. The amount represented expenditure to be incurred in respect of projects completed during the year under consideration. Such expenditure includes, liquidated damages, provisions for material, labour and other expenses, which are due to be spent by the assessee company in view of pending contractual obligations. The amount of claims made but not accepted by the customers as well as liquidated damages deducted by the customers are also covered under the provisions of contractual obligations.

4.6 The Assessing Authority in fact disallowed an amount of Rs.62,36,462/- from the claim made by the assessee. What has been allowed by the Assessing Authority is the amount of actual expenditure incurred by the assessee towards the contractual obligations.

4.7 The fact that the assessee had incurred a sizable portion of the provision as expenditure and the same has been allowed by the Assessing Authority itself is supporting the claim of the assessee that the expenses are accrued and the liability ascertained and the provisions are made on factual basis and they were not in the nature of any contingency of future expenses. The legal character of the provision for contractual obligation is in a way similar to the provision for warranty/guarantee. Therefore, the discussion made in respect of the issue regarding provision of warranty equally applies to the provision for contractual obligations also. There is no doubt that the assessee has to incur expenditure towards the contractual obligations pertaining to the completed projects. This is evident from the fact that the Assessing Officer himself has disallowed only Rs.62,36,462 as against the total claim of Rs.2,63,71,552 made by the assessee company. It shows that the assessee has already

incurred a major portion of the provision by way of actual expenditure. Therefore, we do not find any reason to disallow the balance portion of Rs.62,36,462. The said disallowance is deleted. The Assessing Authority is directed to allow the amount in full.

5.1 In the background of the aforesaid discussions and respectfully following the precedent of the Coordinate Bench in respect of the assessment years 1996-97 and 1998-99 of ITAT order dated 12.3.2008 passed in ITA No.4057/Mum/2000 & ITA No.5367/Mum/2001, in assessee's own case in its favour, we delete the addition of Rs.4,06,87,253/- on account of a contractual obligations/liquidated damages and decide the issue involved in ground No.3 in favour of the Assessee.

Since we have deleted the addition in dispute, as aforesaid vide ground no.3, hence, the other grounds are not being adjudicated.

7. In the result, the Appeal filed by the Assessee is allowed."

3. In view of the circumstances that the amounts claimed were in fact verifiable and had been apparently reflected erroneously as provisions, the Court is of the opinion that in the facts and circumstances of the case, no question of law arises, especially since for AYs 1996-97 and 1998-99, the ITAT had granted relief. The appeal is dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

FEBRUARY 13, 2017/ajk