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

\+ **ITA No. 485/2017**

PR. COMMISSIONER OF INCOME TAX-06 ..... Appellant
Through: Mr. Rahul Chaudhary, Sr. Standing Counsel.

versus

MEDSOURCE HEALTHCARE PVT. LTD. ..... Respondent
Through: Mr. Gajendra Maheshwari, Advocate with Mr. Siddhant Gupta, Advocate.

CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R

% **09.08.2017**

1. This appeal by the Revenue is directed against the order dated 4th November, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 124/Del/2014 for the Assessment Year ('AY') 2008-09.

2. The Respondent filed its return of income, for the AY in question, declaring a total loss of Rs. 1,46,85,298/- which was revised by the Assessee itself to Rs. 13,39,707/-. The AO passed an order on 15th December, 2010 under Section 143(3) of the Income Tax Act, 1961 ('Act') assessing the income at Rs. 2,69,79,000/- after making various additions/allowance including (a) disallowing claim of bad debts amounting to Rs. 54,39,233/-; and (b) addition on account of suppression of gross profit amounting to Rs. 98,62,366/-.

3. As regards the disallowance of the claim of bad debts, when the matter went in appeal before the Commissioner of Income Tax (Appeals) ['CIT (A)'], based on the information supplied by the Assessee, a remand report was sought from the AO. In his report the AO, *inter alia*, stated that the bad debts can be allowed by the Assessee only if the debts are, in fact, written-off in the books of accounts.

4. The contention of Mr. Rahul Chaudhary, learned Senior Standing Counsel for the Revenue, is that the CIT(A) and the ITAT did not actually examine the debt in order to determine whether the bad debts had indeed been written-off in the books of accounts. Learned counsel for the Assessee, appearing on advance notice, has produced before the Court copies of the "Schedules annexed to and forming part of the balance sheet as on 31st March, 1998" which show that the bad debts have been written off in the books of accounts. Consequently, the Court declines to frame any question on this issue. The said documents are taken on record.

5. As regards the other issue of suppression of gross profits, the CIT (A) noted that the gross profit (GP) in the relevant AY was slightly lower due to 'provision of stock written off'. During the physical reconciliation, the Assessee found that the physical availability of the stock was lower than the amount noted in the accounts. The CIT (A) noted that the provision of stock was part of cost of sale which was already added back by the Assessee in the computation of income. If the differential amount was added back, the GP rate worked out to 18.11% which was more than the GP rate estimated by the AO, i.e. 16.66%. Since a sum of Rs. 1,25,05,318/- was already offered to

tax by the by the Assessee, the CIT (A) was of the view that no further addition was called for.

6. Having perused the impugned orders of the CIT (A) as well as the ITAT, the Court is of the view that the decision on this issue turned purely on the facts. No substantial question of law arises even as far as this issue is concerned.

7. The appeal is accordingly dismissed with no order as to costs.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

AUGUST 09, 2017
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