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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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\+ W.P. (C) No. 8439/2016

TRUE ZONE BUILDWELL PVT. LTD. ..... Petitioner
Through: Mr. Inder Paul Bansal and Mr. Vivek Bansal, Advocates

versus

PR. COMMISSIONER OF INCOME TAX, AGRA-2 ..... Respondent
Through: Mr. Rahul Kaushik, Senior Standing Counsel

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

O R D E R
% **05.09.2017**

1. In peculiar facts and circumstances, the Petitioner ('Assessee') has approached this Court challenging the impugned order dated 27th April 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in three miscellaneous applications being M.A. Nos. 83, 84 and 85 of 2014 filed by the Assessee under Section 254 (2) of the Income Tax Act, 1961 ('Act'). The said applications were filed in relation to the orders passed by the ITAT in the three appeals of the Assessee, ITA No. 2092/Del/2012 for Assessment Year ('AY') 2007-08; ITA No. 2093/Del/2012 for AY 2008-09 and ITA No. 2094/Del/2012 for AY 2009-10.

2. The background facts are that the Assessee was subjected to a search and seizure operation under Section 132 of the Act on 31st July 2008. After

receiving notices under Section 153A of the Act, the Assessee filed, on 22nd March 2010, returns declaring an income of Rs. 11,95,100/- for AY 2006-07, Rs. 24,66,241/- for AY 2007-08 and Rs. 1,81,84,890/- for AY 2008-09. For AY 2009-10, the Assessee filed a return on 11th August 2010, declaring an income of Rs. 4,48,15,820/-.

3. According to the Assessee, during the course of assessment proceedings, it replied to the queries raised by the AO by way of questionnaires and placed on record the relevant details. On 29th December 2010, separate assessment orders were passed by the AO for AYs 2006-07, 2007-08, 2008-09 and 2009-10. The AO made additions under Section 69C of the Act in respect of the aforementioned AYs apart from other additions. It must be mentioned that the present petition concerns the additions made under Section 69C of the Act.

4. Aggrieved by the orders of the AO, the Assessee filed appeals before the Commissioner of Income Tax (Appeals) ['CIT (A)']. These appeals were partly allowed by the CIT (A) by its order dated 31st January 2012. The additions made by the AO under Section 69C of the Act were deleted in part.

5. While the Revenue filed appeals against the orders of the CIT (A) for each of the above AYs before the ITAT, the Assessee filed Cross Objections ('COs'). To the extent that the Assessee was denied relief by the CIT (A), it also filed separate appeals before the ITAT.

6. It is stated that on 29th November 2012, all the appeals and cross

objections were heard by the ITAT and orders were reserved.

7. By the order dated 31st December 2012, passed by the ITAT in ITA Nos. 1693/Del/2012 and 2091/Del/2012 and CO No. 246/Del/2012, the ITAT rejected the Revenue's appeal. Against this order of the ITAT for AY 2006-07, the Revenue filed an appeal before this Court viz., ITA No. 400/2013. The said appeal was dismissed by this Court on 3rd April 2014, thus confirming the order dated 31st December 2012 passed by the ITAT in ITA Nos. 1693/Del/2012 and 2091/Del/2012 and CO No. 246/Del/2012 for AY 2006-07.

8. For some reason, although the arguments in the appeals and COs for the above four AYs were heard together, the orders in respect of the appeals for the different AYs was not passed on the same date by the ITAT. The order in the appeal for AY 2007-08 was passed by the ITAT five days later on 4th January 2013. The ITAT followed its own order for AY 2006-07 and dismissed the ground raised by the Revenue in its appeal in respect of the additions under Section 69C of the Act. However, while dealing with the ground raised by the Assessee in respect of the action of the CIT (A) sustaining the part of additions under Section 69C of the Act, the ITAT dismissed the Assessee's appeal. This time it chose not to follow its own order for AY 2006-07.

9. Interestingly, the appeal by the Revenue (ITA No. 736/2014) against the order dated 4th January 2013 of the ITAT in ITA No. 1694/Del/2012 (Revenue's Appeal) for AY 2007-08 was dismissed by this Court by an order dated 5th August 2015. Thus, the ITAT's order dismissing the

Revenue's appeal for AY 2007-08 was confirmed by this Court.

10. Twenty days after the order in the appeal for AY 2007-08, the ITAT on 24th January 2013 passed a separate order in the appeal for AY 2008-09. The ITAT dismissed the Revenue's appeal by following its own order for AY 2006-07. However, it also dismissed the Assessee's appeal by choosing not to follow its order for AY 2006-07.

11. On the same date, i.e. 24th January 2013, the ITAT by a separate order dismissed the Revenue's appeal for AY 2009-10 following its order for AY 2006-07. The ITAT, however, dismissed the Assessee's appeal choosing not to follow its order for AY 2006-07.

12. The grievance of the Assessee is that despite the facts and circumstances for all the four AYs, i.e. 2006-07, 2007-08, 2008-09 and 2009-10 being the same, and the ITAT hearing the appeals and COs arising in respect thereof together and reserving orders on the same day, the ITAT passed separate orders for the different AYs. Further, the said orders were not consistent. The ITAT followed its own order for AY 2006-07 while rejecting the Revenue's appeals for the subsequent AYs, but also rejected the Assessee's appeals by not following the said order for AY 2006-07.

13. This led the Assessee to file the aforementioned MAs under Section 254 (2) of the Act before the ITAT on 16th June 2014 seeking rectification of the ITAT's orders in the Assessee's appeals being ITA Nos. 2092-2094/Del/2012 for AYs 2007-08, 2008-09 and 2009-10 respectively. These three applications, numbered as M.A. Nos. 83/2014, 84/2014 and 85/2014

were dismissed by the ITAT by the impugned order dated 27th April 2016. The ITAT was of the view that allowing the applications would amount to reviewing its own orders dated 4th January 2013 (for AY 2007-08) and 24th January 2013 (for AYs 2008-09 and 2009-10 respectively).

14. Having heard the learned counsel for the parties, the Court is of the view that the Petitioner has been able to make out a case to show that the ITAT contradicted itself by passing separate orders in respect of the Assessee's appeals for the aforementioned AYs on different dates. It is not understood as to how the factual matrix for AYs 2007-08, 2008-09 and 2009-10 could be different from that of AY 2006-07 such that it would necessitate contradictory orders being passed in each of the AYs. The ITAT's order dated 31st December 2012 allowing the Assessee's appeal for AY 2006-07 has been sustained by this Court by dismissing the Revenue's appeal, being ITA No. 400/2013, on 3rd April 2014. Yet, the ITAT did not follow the said order for AY 2006-07 when it came to the Assessee's appeals for the subsequent years, i.e. 2007-08, 2008-09 and 2009-10.

15. In the considered view of the Court, this was a good enough ground for the Assessee to seek rectification of the order under Section 254 (2) of the Act. Accordingly, the impugned order dated 27th April 2016 passed by the ITAT is hereby set aside. This would be tantamount to the three M.A. Nos. 83, 84 and 85 of 2014 filed by the Assessee before the ITAT being allowed.

16. The question then arises as to the consequential order that requires to be passed since the challenge in the present petition is not to the main orders passed by the ITAT on 4th January 2013 and 24th January 2013, dismissing

the Assessee's appeals for the aforementioned AYs.

17. In ***Promain Limited v. CIT [2016] 382 ITR 25 (Del)***, in similar circumstances, the Court observed that, in light of the law explained by the Supreme Court in ***Honda Siel Powers Products Ltd. v. CIT [2007] 295 ITR 466 (SC)***, the Assessee cannot be faulted for approaching the ITAT under Section 254 (2) of the Act instead of directly filing an appeal in this Court. This persuades this Court to hold that the ITAT should hear afresh the Assessee's appeals for aforesaid AYs, i.e. 2007-08, 2008-09 and 2009-10, in view of the subsequent developments as noticed hereinabove.

18. For all of the aforementioned reasons, the Court hereby sets aside the order dated 4th January 2013 passed in the Assessee's appeal ITA No. 2092/Del/2012 for AY 2007-08, and the two orders dated 24th January 2013 passed by the ITAT in ITA Nos. 2093/Del/2012 and 2094/Del/2094/2012 for AYs 2008-09 and 2009-10 respectively. The said three appeals, i.e. ITA Nos. 2092/Del/2012; 2093/Del/2012 and 2094/Del/2094/2012 are restored to the file of the ITAT. The ITAT will pass a fresh order on merits after hearing the parties. The aforementioned appeals shall be now listed before the ITAT for directions on 16th October 2017.

19. The writ petition is disposed of in above terms.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 05, 2017/*rd*