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

+ **ITA No. 775/2017**

THE PRINCIPAL COMMISSIONER
OF INCOME TAX, DELHI-8

..... Appellant

Through: Mr. Rahul Kaushik, Sr. Standing
Counsel.

versus

SRL RANBAXY LTD.

..... Respondent

Through: Mr. Bhuwan Dhoopar, Advocate.

**CORAM: JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH**

ORDER
08.09.2017

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C.M. No. 32839/2017 (exemptions)

1. Allowed subject to all just exceptions.

C.M. No. 32841/2017 (delay in re-filing)

2. For the reasons stated in the application, the delay in re-filing the appeal is condoned. The application is disposed of.

ITA No. 775/2017 & C.M. No. 32840/2017 (delay in filing)

3. Although the Court is not satisfied with the reasons given for delay in filing the appeal, the appeal has nevertheless been examined on merits.

4. The challenge in this appeal is to two orders of the Income Tax Appellate Tribunal (ITAT): (i) an order dated 31st May 2016 passed by the ITAT in

M.A. No. 299/Del/2015 in ITA No. 2276/Del/2012 and (ii) an order dated 7th May 2015 passed by the ITAT in ITA No. 2276/Del/2012 for Assessment Year (AY) (2008-09).

5. The question before the ITAT in the impugned order was whether the Respondent-Assessee was liable to deduct tax at source under Section 194H/194C of the Income Tax Act, 1961 ('Act') on the discounts offered by its collection agents/franchises etc. and consequently, whether the disallowance under Section 40(a) (ia) of the Act would be attracted?

6. After the Assessing Officer ('AO') disallowed the said claim resulting in addition being made to the returned income by the assessment order dated 20th December 2010, the Respondent-Assessee filed an appeal before the Commissioner of Income Tax (Appeals) ['CIT (A)']. By the order dated 20th March, 2012, the CIT (A) partly allowed the appeal of the Assessee.

7. The appeal by the Revenue for AY 2008-09 was heard by the ITAT along with its appeal for AY 2006-07. In para 7 of the common order dated 7th May 2015, the ITAT noted as under:-

“7. We have heard both the counsel and perused the records available on record with us, especially the orders passed by the Revenue Authorities. As regards Ground No. 1 relating to restricting the disallowance from Rs.16,80,66,667/- to Rs. 11,78,24,030/- made u/S 40(A)(i) of the I.T. Act. We find that before the Ld. CIT(A) assessee has stated that the receipt include payments received from SRL Labs, walk in patients and pathological labs owned by the assessee. The working submitted by the assessee show that the amount of discount given to the Collection Centre is Rs.11,78,24,030/- as against the disallowance of Rs. 16,80,66,667/- made by the AO. We

find that Ld. CIT (A) has rightly observed regarding the disallowance of Rs. 11,78,24,030/- the assessee has accepted this amount as discount given to the Collection Centre and there is no dispute regarding this amount of discount given by the assessee. The hospitals which act as Collection Centre have the same agreement, therefore, the discount given to them also falls within the purview of section 40(a)(ia) and has to be disallowed. Keeping in view of the Ld. CIT(A) has rightly held that total disallowance of Rs. 16,80,66,667/- made by the AO, a sum of Rs.11,78,24,030/- (wrongly mentioned as Rs. 11,78,030/- in the CIT(A)'s order) is confirmed on this account, hence, we do not find any infirmity in the order of the Ld. CIT(A). Accordingly, we affirm the same and the Ground No. 1 raised by the Revenue stands rejected.”

8. What the ITAT failed to note was that, in the Assessee’s appeal before the ITAT for AY 2006-07, the ITAT had deleted the disallowance holding that the provisions of Section 194H has been wrongly invoked. This led the Assessee to file a rectification application before the ITAT seeking rectification of the aforementioned para 7. The Revenue too filed a rectification application in the order concerning AY 2006-07 contending that the issue had been decided in its favour for AY 2008-09 and that the ITAT should rectify the mistake.

9. It is acknowledged by the learned counsel for the Revenue that, in view of the fact that the ITAT had allowed the Assessee’s appeal for AY 2006-07, the rectification made by the ITAT by way of the impugned order dated 31st May 2016, at the instance of the Assessee, should be sustained. The learned counsel for the Revenue states that he is not aware as to whether the ITAT’s order in the assessee’s appeal for AY 2006-07 has been challenged by the Revenue.

10. In terms of the ITAT's order dated 31st May 2016, the rectified para 7 of its order dated 7th May 2015 reads as under:

“7. We have heard both the counsel and perused the records available on record with us, especially the orders passed by the Revenue Authorities. As regards Ground No. 1 relating to restricting the disallowance from Rs.16,80,66,667/- to Rs.11,78,24,030/- made u/S 40(a)(ia) of the I.T Act. We find that before the Ld. CIT(A) assessee has stated that the receipt include payments received from SRL Labs, walk in patients and pathological labs owned by the assessee. The working submitted by the assessee show that the amount of discount given to the Collection Centre is Rs. 11,78,24,030/- as against the disallowance of Rs. 16,80,66,667/- made by the AO. Keeping in view the above facts and circumstances and following the order dated 16.12.2011 of the Tribunal in the assessee's own Appeal being ITA No.434/Del/2011 for the same assessment year 2006-07, we do not find any infirmity in the order of the Ld. CIT(A). Accordingly, we affirm the same and the Ground No.1 raised by the Revenue stands rejected.”

11. This Court, therefore, finds no substantial question of law arising either from the order dated 7th May 2015 of the ITAT (as amended) or its subsequent order dated 31st May 2016 in the rectification application filed by the Assessee. The appeal is dismissed.

S. MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 08, 2017/‘anb’