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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 1179/2017, C.M. APPL.46757/2017**

PR. COMMISSIONER OF INCOME TAX, DELHI - 2..... Appellant
Through : Sh. Zoheb Hossain, Sr. Standing
Counsel.

versus

M/S. CHEMICAL CONSTRUCTION INTERNATIONAL PVT.
LTD. Respondent
Through : Sh. Simran Mehta and Ms. Priyanka,
Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A.K. CHAWLA

ORDER
% **21.12.2017**
C.M. APPL.46757/2017

For the reasons mentioned in the application, the delay in filing is condoned. The application is accordingly allowed.

ITA 1179/2017

The Revenue urges three question of law in its appeal against the order of the Income Tax Appellate Tribunal (ITAT) under Section 260A of the Income Tax Act, 1961 [hereafter “the 1961 Act”].

The first question relates to the technical knowhow paid to a German enterprise. This was disallowed by the Assessing Officer (AO); however, the CIT(A) held the amount not to be taxable. The Income Tax Appellate Tribunal (ITAT) endorsed the CIT(A)’s view.

This Court is of the opinion that no question of law arises in view of the concurrent findings. Furthermore, the order in *Pr. Commissioner of Income Tax v. Chemical Construction International Pvt. Ltd.* [ITA 765/2017, decided on 20.09.2017] is also determinative because the CIT(A) and the ITAT have furnished cogent reasons.

The second question sought to be urged is with respect to the provision for warranty. The AO brought the sum of ₹60,76,476/- and debited it to the Profit and Loss Account. According to the AO, the provision for warranty expenses was not a liable deduction as the claim was purely contingent and not a liability *in presenti*. The CIT(A) and ITAT concurrently ruled against the Revenue. The decision relied upon in this regard by the both the lower appellate authorities was *Rotork Control India (Pvt.) Ltd. v. CIT* 2009 (314) ITR 62; the Supreme Court had held that if the treatment is based on historical facts, and also involved deployment of an actuarial consideration, the claim should be accepted.

This Court discerns no infirmity in the impugned order on this aspect.

No question of law, therefore, arises.

The last question of law sought to be urged is with respect to interest expenses. The assessee had borrowed ₹1,16,92,948/-. The AO brought to tax the interest paid on the ground that the assessee had in fact lent a sum of ₹95,03,987/- to its subsidiary and further amounts to its Director to the tune of ₹1,85,914/-. The CIT(A) and the ITAT held that the borrowing was based upon commercial expediency which

could not be questioned by the AO.

The record also discloses that the reserves at the end of the year, having regard to the closing balance, indicated that the assessee had a sum of ₹2,53,56,921/- (in its books). In these circumstances, having regard to the fact that the bulk of the borrowed amount was made available to the subsidiary which was set-up to further the assessee's business, its plea of commercial expediency is sound.

No question of law, therefore, arises on this aspect.

In view of the foregoing discussion, the appeal does not raise any substantial question of law; it is accordingly dismissed.

S. RAVINDRA BHAT, J

A.K. CHAWLA, J

DECEMBER 21, 2017/ajk