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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 1084/2017, C.M. APPL.43425/2017

PR. COMMISSIONER OF INCOME TAX-6 Appellant
Through : Sh. Sanjay Kumar, Jr. Standing
Counsel, for Sh. Rahul Chaudhary, Sr. Standing
Counsel.

versus

MIRA EXIM LTD. Respondent
Through : Ms. Ananya Kapoor, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER
% **29.11.2017**

The Revenue's grievance in this appeal under 260A of the Income Tax Act, 1961 is that the Income Tax Appellate Tribunal (ITAT) erred with respect to findings on certain disallowances directed by the Assessing Officer (AO).

Various issues were urged by the assessee aggrieved by the AO's order for AY 2009-10. Most of them pertained to the treatment to be given to amounts paid by the assessee to overseas entities. The findings of the CIT(A) and the ITAT concurrently were that one of the overseas recipients was a partnership firm, which influenced the treatment under Article 12 of the Indo-Canada Direct Taxation Avoidance Agreement.

Two questions are urged in this appeal. The first is with respect

to the deletion of ₹7,27,532/- under Section 40(a)(ia) of the Income Tax Act, 1961 [hereafter “the 1961 Act”] and the second, the addition of interest to the extent of ₹1,02,22,500/- under Section 36(1)(iii).

So far as the first question, i.e. deletion of ₹7,27,532/- is concerned, this Court is of the opinion that since the ITAT has rendered findings that the amounts paid were not Fee for Technical Services (FTS) under Explanation 7 to Section 9(2), similar treatment would arise. As far as this is concerned, the Court notices that the ITAT relied upon the interpretation given to similar provisions of various DTAA's in *Cushman & Wakefield Pte. Ltd. in Re.* 305 ITR 208; *Dieter Eberhard Gustav v. CIT* 235 ITR 698 etc. and held that since these were not in the nature of FTS, the deduction under Section 40(a)(ia) was not warranted. Reliance by the Revenue upon the retrospective amendment, in the opinion of this Court, is not justified, given the ruling in *Director of Income Tax v. New Skies Satellite BV* (2016) 382 ITR 114 (Del). No question of law, therefore, arises.

So far as the second issue, i.e. the disallowance under Section 36(1)(iii) is concerned, the addition was made purely on the basis that the funds were borrowed by a Director and that interest needed to be charged. This was wholly erroneous premise because the amounts were given to the Director for purely business purpose of the entity, i.e. to acquire guest house. The proposal did not materialize and eventually the money was returned. It is not Revenue's case that the amounts were utilized by the Director for her own purpose. In these circumstances, the ITAT appropriately relied under *CIT v. Bharti Televentures Ltd.* (2011) 331 ITR 502 (Del). The finding with respect

to commercial expediency, in the circumstances, does not call for interference.

In view of the above reasoning, the appeal is not tenable. No substantial question of law arises. The appeal is accordingly dismissed.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

NOVEMBER 29, 2017/ajk