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

+ **ITA No. 810/2017**

THE BANK OF TOKYO - MITSUBISHI UFJ LTD.Appellant
Through: Mr. Nishant Thakkar, Advocate.

versus

DEPUTY COMMISSIONER OF INCOME TAXRespondent
Through: Mr. Rahul Chaudhary, Senior
Standing Counsel with Mr. Sanjay
Kumar Mishra, Junior Standing
Counsel.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE PRATHIBA M. SINGH

% **ORDER**
15.09.2017

C.M. No. 33771/2017 (exemption)

1. Allowed, subject to all just exceptions.

ITA No. 810/2017

2. This is an appeal by the Assessee under Section 260 A of the Income Tax Act 1961 ('Act') directed against the order dated 27th April 2017 of the Income Tax Appellate Tribunal ('ITAT') in ITA No. 3706/Del/2014 for Assessment Year ('AY') 2002-03.

3. Admit.

4. The following question of law is framed for consideration:

“Having found that the Commissioner of Income Tax (Appeals) [‘CIT (A)’] had agreed with the Assessee on the merits of the claim but had wrongly declined to entertain the claim on technical grounds, whether the ITAT erred in remanding the matter to the CIT (A) for re-adjudicating on merits?

5. Learned counsel for the Appellant-Assessee points out that although a second question has been urged as regards the rate of income tax, the Assessee is not pressing the said question since it has incurred a loss this year.

6. The facts in brief are that the Assessee filed its return for the AY in question on 20th October 2002 after adjustment of brought forward business losses. The liability under Minimum Alternate Tax (‘MAT’) was determined at Rs. 5,02,31,196/-. The Appellant thereafter filed its revised return of income on 19th February 2003.

7. It is explained that in this AY 2002-03, the Assessee had written back in its Profit and Loss Account the provisions amounting to Rs. 13,26,92,937/- created by it in the earlier years and accordingly increased its income to that extent. In the computation of income under the Act for AY 2002-03, the Appellant should have reduced Rs. 13,26,92,937/- from its income. Instead it inadvertently increased its taxable income by adding the provision thereby increasing its income offered to tax by Rs. 26,53,85,874/- (double of Rs. 13,26,92,937/-).

8. The return was picked up for scrutiny and a questionnaire was issued by the Assessing Officer (AO). Thereafter, an assessment order was passed by

the AO on 30th March, 2005 adding the above sum of Rs. 132,692,937/- while computing the taxable income.

9. The Assessee then went in appeal before the CIT (A). By order dated 31st March 2014, the CIT(A) agreed with the Assessee that there was an inadvertent mistake committed by adding back the above sum to the taxable income. The specific finding of the CIT (A) in this regard reads as under:

“I have examined the facts of the case along with the submission made by the AR. In this case, the appellant inadvertently added the reversal of provision instead of reducing the same from its taxable income. It was evident from the financial statement and computation of income of the earlier years that no deduction was claimed by the appellant in the year when, such provision was created since such provision was added to the income of the appellant in the year of creation of the provision.

It was rightly pointed out by the Ld. AR for the appellant that such an error resulted into double addition to the income of the appellant.”

10. The CIT (A) also referred to the decisions of both the Supreme Court in ***Goetze India Limited v CIT [157 Taxman 1]*** and the decision of this Court in ***CIT v Jai Parabolic Springs Limited [306 ITR 42]***. However, the CIT (A) declined to grant relief to Assessee on the ground that in those cases the Assessee was claiming a deduction while in the present case, the question was of correction of an accounting mistake.

11. In the further appeal by the Assessee, the ITAT again agreed with the Assessee that the CIT (A) should not have rejected the claim of the Assessee merely on the technical ground. The ITAT held that the decision of this

Court *Jai Parabolic Springs* (*supra*) would be applicable. Nevertheless, in spite of granting relief itself, the ITAT remanded the matter to the file of the CIT (A) “with direction to re-decide this ground strictly on merits, in accordance with law”.

12. When the factual and legal position was clear, there was no need at all for the ITAT to have remanded the matter to the CIT (A). Recently, in an order dated 8th May, 2017 in ITA No.165/2017 (*Alcatel -Lucent India Ltd. v. Deputy Commissioner of Income Tax*), this Court had occasion to observe as under:

“The Court finds merit in the contention of learned counsel for the Assessee. The practice of remand to the TPO should be resorted to by the ITAT only where it is absolutely necessary. It could be either because of lack of clarity on factual aspects or because some facts have emerged since the order of the TPO that require to be taken into consideration since it would have a bearing on the outcome. Further the remand order in such circumstances should clearly spell out what the scope of the remand is. Where all the relevant facts are already before the ITAT and the parties have no new material to provide, simply remanding the issue to the TPO without rendering a finding thereon would be an abdication of the functions of the appellate body.”

13. In view of that matter, the question framed by the Court is answered in the affirmative i.e. in favour of the Assessee and against the Revenue.

14. The net result is that the Assessee’s claim of having the aforementioned added amount deleted from the taxable income stands allowed and the AO will pass an appeal effect order accordingly.

15. The appeal is disposed of in the above terms.

S.MURALIDHAR, J.

PRATHIBA M. SINGH, J.

SEPTEMBER 15, 2017

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