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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 1090/2018 & CM APPL. Nos.40595/2018, 45166/2018**
PR. COMMISSIONER OF INCOME TAX DELHI -11

..... Appellant

Through: Mr.Zoheb Hossain, Sr. Adv with
Mr.Deepak Anand, Adv.

versus

M/S INDIAN FARMERS FERTILIZERS COOPERATIVE LTD.

..... Respondent

Through: Ms. Kavita Jha, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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29.10.2018

CM APPL. 40595/2018 (seeking condonation of delay)

Learned counsel for the respondent-assessee does not oppose this application seeking condonation of 26 days delay in re-filing the appeal.

In view of the statement, the application is allowed.

ITA 1090/2018

2. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (Act) in the case of M/s Indian Farmers Fertilizers Coop. Ltd. (Respondent-assessee) relates to assessment year 2011-12. By the impugned order dated 19.03.2018, the Income Tax Appellate Tribunal has quashed the order dated 09.08.2016 passed by the Principal Commissioner under Section 263 of the Act.

3. Learned counsel for the Revenue accepts that similar order passed by the Principal Commissioner in the case of respondent-assessee for the assessment year 2010-11 under Section 263 of the Act was quashed by the

Tribunal.

4. It also accepts that appeal under Section 260A filed by the Revenue, ITA No. 597/2017 for the assessment year 2010-11, was dismissed by this High Court vide order dated 02.08.2017.

5. Learned counsel for the Revenue submits that facts relating to assessment year 2010-11 are distinguishable and the order passed should not be followed as there was reduction in tax slabs/rate paid by the respondent-assessee in Oman from 30% to 12%. This factum was duly noticed by the Assessing Officer in the assessment order dated 27.03.2014 under Section 143(3) of the Act for the present assessment year 2011-12.

6. Operative portion of the order under Section 263 of the Act passed by the Principal Commissioner of Income Tax for the assessment year 2011-12 reads as under:

“DECISION

9. I have carefully considered the submissions of the assessee. Similar issues had arisen in the case of the assessee for the A.Y. 2010-11.

10. A detailed order was passed on 29.03.2016 u/ s 263.

11. The AO is directed to follow the order passed u/s 263 for the A.Y. 2010-11 even for the A.Y. 2011-12.

12. It may be mentioned that on the issue of tax credit the assessee had relied upon letters dated 06.08.2000 and 11.12.2000 before the Hon'ble ITAT in the case of KRIBHCO. The assessee had also relied upon the decision of the Hon'ble ITAT in the case of M/ s KRIBHCO for advancing his arguments in the case of M/ s IFFCO.

13. In the similar case i.e. M/ s KRIBHCO, the Hon'ble ITAT has given relief to the assessee on the issue of tax credit deemed to be paid in Oman and quashed the proceedings u/ s 263. The Department is not accepting the decision of the Hon'ble IT AT in the case of M/ s KRIBHCO and the CCIT-1

& CCIT-2 has already authorized the PCIT to file appeal before the Hon'ble Delhi High Court.

14. It may be noted that the assessee was specifically asked vide this office letter dated 14.07.2016(reproduced above in para 6) to show whether these letters were before the AO on the basis on which the Hon'ble ITAT has given the relief.

15. The assessee filed reply vide letter dated 27.07.2016 wherein it was admitted by the assessee that these letters were not before the AO. The assessee has simply stated that even if the letters issued by Secretary General of Taxation are ignored for a moment, the claim of the society for tax credit falls within the four comers of Article-25(4) w.r.s. 90(1)(a)(ii). This means these letters were not before the AO. This itself shows the lack of enquiry on part of the AO and falls within the assumption of jurisdiction u/s 263.

16. In the result, the matter is restored back to the file of the AO for making the assessment de novo in view of the observations given above and also the order u/ s 263 in the case of the assessee for the A.Y. 2010-11. The assessee may be given sufficient opportunity before finalizing the order”.

7. The aforesaid quotation clearly refers to the earlier order passed by the Principal Commissioner under Section 263 of the Act relating to the assessment year 2010-11. It is also recorded that the Tribunal had quashed the said order for the assessment year 2010-11; however, an appeal had been preferred by the Revenue before the Delhi High Court. Hence, the Principal Commissioner for consistency and as the issue had not attained finality had passed the order under Section 263 of the Act for the assessment year 2011-12.

8. In the aforesaid background, *ex facie* the order dated 02.08.2017 passed in ITA No. 597/2017 for the assessment year 2010-11 would equally apply to the present appeal.

9. The contention of the Revenue that there was material change in view

of the reduction of tax rate applicable to the respondent-assessee in Oman is inconsequential and misconceived. The assessing officer in his original order dated 27.03.2014 for the present year had allowed and given rebate of tax paid in Oman at the rate of 12% and not at the rate of 30%. Accordingly, the respondent-assessee was given tax credit of Rs. 17,37,09,837/- out of the total dividend paid in Oman of Rs. 144,75,81,978/-. Thus, the assessing officer had taken notice of the reduction of rate of tax and tax credit was only given for the tax paid in Oman. Change in tax rates/slab, therefore, would not make any difference; nor would it negate the ratio of the decision dated 02.08.2017 passed by the Division Bench of this Court in ITA No.597/2017 pertaining to the assessment year 2010-11. The ratio of the order would accordingly apply. For the reasons stated in the order dated 02.08.2017 passed in ITA No. 597/2017 for the assessment year 2010-11 we hold that no substantial question of law arises for consideration in the present appeal.

10. This appeal is accordingly dismissed with no order as to costs.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

OCTOBER 29, 2018

uj

