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

+ ITA 1017/2017

THE COMMISSIONER OF INCOME TAX-LTU Appellant

Through: Mr. Puneet Rai, Adv.

versus

CAPARO MARUTI LTD.

..... Respondent

Through: Ms. Sachit Jolly with Mr. Aarush
Bhatia, Advs.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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13.02.2018

On 21.11.2017, this Court passed the following order:

"CM No. 42217/2017 (condonation of delay in filing appeal)"

For the reasons stated in the application, the application is allowed. The application stands disposed of.

ITA 1017/2017

The appeal under Section 260A proposes four questions of law. The first three questions are inter-linked and dependent upon the answer to the first question, i.e., date of commissioning of the plant and machinery. The second and third questions pertain to additional depreciation claimed by the assessee and third question relates to manufacturing expenses.

The AO, for assessment year 2005-06 based upon the material, made available which included statement by one Sh. Sanjeev Sharma, General Manager of the Assessee's unit, concluded that the commissioning of the facilities and machinery took place only in April, 2005 and consequently depreciation as well as manufacturing expenses could not be allowed. These determination by the AO was confirmed by the CIT(A). The ITAT further disagreed and set aside the finding of the both the authorities.

The ITAT took note of the fact that apart from the statement relied upon by the AO, there were objections available on record such as production of documents to show that the plants/machinery in question was set up on three dates, i.e., 17.03.2005, 20.03.2005 and on various dates. The ITAT also noted that batch of manufactured/finished products was reflected in the account books with excise duty and VAT as against those revenues were received. It had contended that besides the statement of the General Manager, the freight records and other accompanied documents were not produced which justified AO's conclusion.

The Court is of the opinion that so far as the availability of material - which Revenue's determination to be insignificant, is concerned, the finding of the ITAT cannot be faulted, based on the record. The Revenue concededly accepted the sale and expenditure claimed in that regard towards the payment of the tax, etc, the details of the material placed on record. In these circumstances, the first three questions do not arise.

It is contended by the Revenue that on the fourth issue no question of law arises since the assessee claimed the entire sum of ₹49,16,450/- towards the interest for the

new machinery purchased by it, loan in that regard was sanctioned and appears to have been utilized and immediately thereafter interest payable was claimed in totality. It was contended that the entire sum of ₹49,16,450/-, in these circumstances, cannot be allowed as a whole.

The following question of law, therefore, arises:-

"Did the ITAT fall into error in permitting the interest charged on the entire sum of ₹49,16,450/- having regard to the provisions to Section 36(1) (iii) of the Income Tax Act?"

Admit."

We notice from the impugned order that the ITAT was conscious that the assessee could not possibly claim the entire amount of ₹49,16,450/- as a deduction and therefore remitted the matter for consideration by the AO, in the following terms:

"14. We have already held in ground No. 1 that the assessee has set up its business and commenced production before 31.3.2005, therefore, the ld AO is directed to verify the allowability of expenditure covered in ground Nos. 3 and 4 of this appeal considering that aspect and then deciding the issue afresh about the allowability of the expenditure in accordance with law. In the result ground Nos. 3 and 4 of the appeal is allowed with above direction."

In the light of the above remission, the Court is of the opinion that the AO is empowered to consider the relevant materials and such documents as the assessee may produce in the

course of the remission to determination of exact sum that is to be permitted or disallowed, as the case may be. While doing so, the AO shall render the exact finding as to the date of setting up and commencement of production of the assessee's unit in question.

The question of law is answered accordingly.

The appeal is disposed of in the above terms.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 13, 2018

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