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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 43/2018 and CM APPL. 1623/2018
PRINCIPAL COMMISSIONER OF INCOME TAX, DELHI-5,
..... Appellant

Through: Mr Rahul Kaushik, Adv
versus

LG ELECTRONICS INDIA PVT. LTD. Respondent
Through: Mr Rohit Jain and Mr Kunal Gokhale,
Adv

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **17.04.2018**

Admit.

The following question of law arises for determination:-

“Did the ITAT fall into error in holding that the jurisdictional Commissioner of Income Tax (CIT) could not have exercised revisional jurisdiction under Section 263(1) of the Income-tax Act?”

With consent of the learned counsel for the parties, the appeal was finally heard. The assesee is beneficiary to a subsidy scheme which enables it, *inter alia*, to collect sales tax and later claim refund to the tune of 75% of the gross fixed capital investment. It contended that the sum of ₹ 49,38,00,503/- received thus from the Government of Maharashtra was capital receipt not chargeable to tax. The A.O accepted this treatment without discussion and allowed the assesee to treat the amounts received as capital in nature. The CIT exercising

jurisdiction under Section 263 of the Act was of the view that the A.O's unreasoned order, was both prejudicial to the interest of the revenue and assessee's in law. After issuing notice, the CIT proceeded to remit the matter after rendering specific findings that the character subsidy was revenue in nature and thus taxable. The ITAT considered the merits of the scheme and took into consideration the judgments of the Supreme Court in *Sahney Steel & Press Works Ltd. etc. v. CIT* (1997) 228 ITR 253 (SC) and *CIT v. Ponni Sugars and Chemicals Ltd* (2008) 306 ITR 392 (SC). Thereafter, it concluded as to the nature of the subsidy, that on a fair analysis of the facts, as to whether the subsidy amounts were capital or revenue was a debatable question and no error could be attributed to the A.O in this regard.

This Court has considered the submission of the parties. The A.O's order hardly contains any view. Learned counsel for the assessee had relied upon a decision of this Court in *Commissioner of Income-tax, Delhi-IV v. DLF Ltd.* (2013) 31 taxmann.com 158 (Delhi) to say that a debatable question is *per se* incapable of revision under Section 263(1) of the Act. This Court is cognizant of the ruling in *DLF Ltd. (supra)*; in issue was a disallowance in respect of the salutary dividend warrant. The Court was of the opinion that *per se* disallowance of the kind, dictated under Section 263 was impermissible as it could justifiably be argued that no expenditure was incurable for earning income through one dividend warrant. *DLF Ltd.(supra)* in the opinion of the Court, therefore, does hardly constitute an authority on the issue. Mainly, the A.O's decision in

this case accepting the assessee's returns on the point upon the assessee's explanation, without recording any reasons, given the complex nature of the subsidy, was *ex facie* erroneous. Undoubtedly, it could potentially be prejudicial to the revenue – to the extent of ₹ 49/50 crores. Given all these circumstances, the ITAT's rejection of the invocation of revisional jurisdiction, in our opinion, was not justified. The question as to the debatability of any issue can arise only if reasons are apparent.

Having concluded thus, at the same time, this Court is conscious that the CIT has rendered an elaborate finding as to why the amounts could not be treated as capital. The ITAT applied its own analysis and set aside the determination. It would, therefore, be in interest of justice that the remit of the A.O should be on the wider question as to the assessee's contention that whether the subsidy amounts received are in fact capital in nature; the CIT(A) order shall not be therefore construed as prejudicial or conclusive in the matter.

The A.O will consequently pass a fresh order based upon his independent analysis as to whether the amount received by way of subsidy is capital or revenue in nature.

The appeal is allowed to the above extent.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

APRIL 17, 2018 / SU