116-A IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA-362-2019 (O&M)
Date of decision :16.12.2019

The Pr. Commissioner of Income Tax, Gurgaon.
...... Appellant

versus

M/s Motorola India Private Ltd. ...... Respondent

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI
HON'BLE MR. JUSTICE VIVEK PURI

Present : Mr. Tajender Joshi, Senior Standing Counsel with
Mr. Vikram Bali, Junior Standing Counsel
for the appellant.
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<u>AJAY TEWARI, J. (Oral)</u>

1. The present appeal has been filed under Section 260A of the Income Tax Act, 1961 (in short 'the Act'), against the order dated 24.08.2018, passed by the Income Tax Appellate Tribunal, Delhi Bench 'I-1' New Delhi, in ITA No. 2941/DEL/2011 for the assessment year 2003-2004.

2. This appeal has been filed against the order of the ITAT whereby objection to the order of the appellate authority (as per which the matter was remitted back to the A.O.) has been challenged. Learned counsel has argued that Section 251 was amended by the Finance Act, 2001 and the specific power to remand back was consciously omitted by Parliament and therefore, the Tribunal erred in upholding the order of the CIT (Appeals) in remanding the issue back. We find that the four questions of law, which have been formulated deal with the merits of the deletions. However, learned counsel has very fairly argued that before the Tribunal these specific grounds were never raised or argued and only the legality of the order of remand was urged.

3. It transpires that the computation had been re-done after the remand order and as per that computation the assessee was entitled to certain allowances. Once the merits of those allowances have not been challenged before the Tribunal (thereby implying that in fact the assessee was not disentitled thereto, on merits), we do not deem it appropriate to entertain this question of law in the present case and dismiss this appeal with the observation that the issue regarding the computance of the Commissioner to remand back has not been examined in the case and the order of the Tribunal would also be deemed to be limited to the facts of the present case and can not be used as a precedent.

4. Since the main case has been dismissed, the pending Civil Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

(VIVEK PURI)
JUDGE

16.12.2019
Janki

Whether speaking/reasoned Yes/No
Whether Reportable : Yes/No