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

\+ ITA 61/2019

THE PR. COMMISSIONER OF INCOME TAX -6 ..... Appellant
Through: Mr. Ruchir Bhatia, Mr. Puneet Rai, Advs.

versus

MOSAIC INDIA PVT. LTD ..... Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% 25.01.2019

Two questions of law are sought to be urged by the Revenue in this appeal. First, relates to the issue of foreign exchange fluctuations loss reported by the assessee and second, is the demurrage charges disallowed under explanation to Section 37(1) of the Income Tax Act towards demurrage charges paid.

Regarding the first issue, this Court notices that the ITAT took into account the judgment of the Supreme Court in *CIT v. Woodward Governor*, 312 ITR 254. The assessee had entered into further contracts as a buffer against fluctuations. The actual payment towards the loss incurred was to be made under the contract should be on a later date, however, it related to the accounting year falling between the assessment year in question (AY 2012-13). In the circumstances, the question of law sought to be urged is not substantial as there is Revenue neutrality involved. Furthermore, the Court is satisfied that the principle in the Woodward Governor (supra) would correctly apply and because the assessee followed the AS 11.

On the second aspect i.e. the demurrage expenses or charges, the Court notices that by no stretch of imagination such contractual payment be characterised i.e. penal in the sense that they are opposed to law or contrary to public policy of the kind envisioned in the Statute. The disallowance, per explanation to Section 37(1) is with respect to the expenses that are illegitimate *per se* and cannot be contractual payment of the kind that the assessee had to pay on account of late clearance of goods beyond the later time provided by the Charter party. No question of law arises.

The appeal is dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

JANUARY 25, 2019/akv