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

\+ **ITA 453/2019**

PR. COMMISSIONER OF INCOME TAX-6 ..... Appellant
Through: Mr. Asheesh Jain, Senior Standing Counsel for Revenue.

versus

MOHAN EXPORTS PVT. LTD. ..... Respondent
Through: Mr. V.P. Gupta with Mr. Arunav Kumar, Advocates.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR
HON'BLE MR. JUSTICE TALWANT SINGH

O R D E R

% **24.07.2019**

1. The Revenue is in appeal against the order dated 3rd October 2018 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No.5790/2010 for the Assessment Year (AY) 2004-05.

2. The Revenue is aggrieved by the impugned order of the ITAT quashing the re-assessment proceedings holding that the assumption of jurisdiction by the Assessment Officer (AO) under Sections 147/148 of the Income Tax Act, 1961 ('Act') to be bad in law.

3. The Court notes that in respect of the same Assessee, the Revenue's appeal for the AY 2006-07, ITA 640/2017, where again

the issue of reopening of the assessment by issuing notice to the Assessee under Section 147 of the Act was involved, was dismissed by this Court by a detailed judgment dated 4th January 2018.

4. The Court finds that the points urged by the Revenue in the said appeal about the Volcker Committee report constituting the incriminating material on the basis of which the reopening of the assessment was sought to be justified were not accepted by this Court in the said order in ITA 640/2017. It was held by this Court that the addition made by the AO by disallowing the commission payments was entirely on 'suspicion'.

5. Learned counsel for the Revenue sought to distinguish the aforementioned decision in ITA 640 of 2017 by submitting that in the said appeal it was contended by the Assessee that during the AY in question i.e. AY 2006-07 no export directly or indirectly had been made to the Iraq nor had the Assessee claimed any commission or payment in connection with the transactions pertaining to Iraq whereas in present case for the AY 2004-05, the Assessee had admitted to making exports to Iraq.

6. As far as the present AY 2004-05 is concerned, the Court notes that CIT (A) has examined the issue in great detail on facts and concluded that reopening of the assessment was without any credible evidence. It was noted that the goods were supplied in November, 2003 and the sale consideration was received in January/ February, 2004. There

was no evidence that the two entities to whom commission was paid by the Assessee were working under the regime of late Saddam Hussain. The CIT (A) examined the agreements executed by the Assessee with the said two entities and came to the conclusion that there was no evidence to show that the commission payment was either bogus or represented illegal or illicit payment for late Saddam Hussain. It was further concluded that the payment of commission by the Assessee during the AY in question was not made to any company which finds mention in the report submitted by Volcker Committee.

7. The ITAT in the impugned order again discussed the merits in detail and concurred with the findings of the CIT (A).

8. On examining the impugned orders, we too find no ground to interfere with the aforementioned concurrent factual findings of the CIT (A) and the ITAT. No substantial question of law arises. The appeal is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 24, 2019
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