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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **ITA 454/2019**

PRINCIPAL COMMISSIONER OF INCOME TAX-6..... Appellant

Through: Ms.Vibhooti Malhotra, Advocate.

versus

M/S DHARA VEGETABLE OIL AND FOODS COMPANY LTD.
..... Respondent

Through: Ms.Shashi M.Kapila with Mr.R.R.Maurya, Mr.Pravesh Sharma, Mr.Sushil Kumar, Mr.Siddhrth Kapila and Ms.Malvika Kalra, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

<u>O R D E R</u>

% **24.07.2019**

1. The Revenue is in appeal against an order dated 11th October 2018 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.2875/Del/2013 for the Assessment Year (AY) 2003-04.

2. There are two questions sought to be urged by the Revenue. One is whether the ITAT was justified in quashing the reassessment order passed by the Assessing Officer ('AO') under Section 147 of the Act admitting grounds of appeal of the Assessee under Rule 27 of the ITAT Rules even though no appeal or cross objections have been filed by the Assessee itself against the order of the Commissioner of Income Tax (Appeals) [CIT(A)]?

3. As far as the above plea is concerned this Court finds that the point stands answered against the Revenue by the decision of the Gujarat High Court in ***Principal Commissioner of Income Tax, Vadodara-2 v. Sun Pharmaceuticals Industries Ltd.(2018) 408 ITR 517 (Gujarat)*** holding that although an Assessee may not have appealed or filed a cross-objection, in a different proceedings before the Appellate Forum / Tribunal, he is free to defend such order on all grounds including on any of the grounds decided against him by the authority whose order is otherwise in his favour. Consequently, this Court is not persuaded to frame any question on this issue.

4. The second issue urged is whether the ITAT was justified in deleting the addition made on account of disallowance or deductions claimed by the Assessee under Section 35(1)(ii) of the Act?

5. The brief facts as far as this issue is concerned are that according to the Revenue the actual research expenses have been incurred by the Mother Dairy Fruits and Vegetables Ltd. whose subsidiary is the present Assessee. The Assessee apparently reimbursed the expenses incurred on scientific research for Mother Dairy Fruits and Vegetables Ltd. The Assessee has been assessed in Gujarat prior to the AY in question and for an earlier AY 2002-03 where again in reassessment proceedings such expenses were sought to be disallowed, the High Court of Gujarat decided the issue in favour of the Assessee by its order dated 10th July 2012 in Special Civil Application No. 9826 of 2009 (***Dhara Vegetable Oil and Foods Co. Ltd. v. The Deputy Commissioner of Income Tax***).

6. The said decision appears to have been accepted by the Revenue. In that view of the matter this Court is not inclined to frame any question on this issue as well.

7. The appeal is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 24, 2019
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