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

\+ **ITA 599/2019**

PR. COMMISSIONER OF INCOME TAX 8, DELHI ..... Appellant
Through Mr. Raghvendra Kishore Singh, Sr.Standing counsel & Mr. Vipul Agrawal, Jr.Standing counsel

versus

M/S SISTEMA SHYAM TELESERVICES LTD. ..... Respondent
Through Mr. Piyush Kaushik, Advocate

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **09.07.2019**

1. The revenue is in appeal against an order dated 25th January, 2019 passed by the ITAT in ITA No. 732/Del/2016 for the Assessment Year (AY) 2010-2011.

2. The ITAT while dismissing the Revenue's appeals against the decisions of the ITAT involving the same Assessee for AYs 2003-2004, 2004-2005, 2009-2010 in ***Commissioner of Income Tax-III & Ors. v. Shyam Telelink Ltd. & Ors. [2019] 410 ITR 31 (Del)*** had in the operative portion held as under:-

> "20. Looked at from all angles, we do not find any reason or good ground to interfere with the order passed by the Tribunal. The substantial question of law is accordingly answered in favour of the respondent-assessee and against the Revenue. The appeals are disposed of. We would clarify that the Assessing Officer while passing the appeal effect order, would ensure that

> the unutilized talk time has been accounted for and included in the receipt of the year in which the amount had lapsed and was forgone. In the facts of the present case, there would be no order as to costs."

3. It is pointed out by Mr. Raghvendra Singh, learned Senior standing counsel for the Revenue that in para 7 of the above order, this Court noted the submissions made on behalf of the Assessee that "the Revenue has accepted similar directions passed by the Tribunal for AYs 2010-2011 onwards." The reference was to the direction issued by the ITAT while rejecting the Revenue's appeal for AY 2003-2004 and 2004-2005 by the order dated 9th July, 2012 that the Assessing Officer (AO) should verify "whether in the subsequent year the Assessee has declared the revenue in respect of expired pre-paid cards or not". In case no discrepancy was found, no adjustment was called for with the Assessee's mode of revenue recognition.

4. It is pointed out by Mr. Singh that notwithstanding the above statement as recorded in para 7 of the order of this Court in ***Shyam Telelink Ltd.***, there is in fact in the impugned order which pertains to AY 2010-2011 no such similar direction issued by the ITAT. He in fact urges that there should be such a direction issued to the AO for the present AY as well.

5. Learned counsel for the Assessee has no objection to this Court reiterating, as in para 20 of the above order in ***Shyam Telelink Ltd.***, that while passing the appeal effect order the AO would ensure that the "the unutilised talk time has been accounted for and included in the receipt of the

year in which the amount had lapsed and has forgone."

6. While reiterating the above direction for the AY in question i.e. 2010-2011, this Court also directs the AO to verify whether the Assessee has declared "the revenue in respect of the expired pre-paid cards or not".

7. The appeal is accordingly dismissed with the above directions.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 09, 2019
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