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

\+ **ITA 666/2019**

PRINCIPAL COMMISSIONER OF INCOME TAX- 1

..... Appellant

Through: Ms.Vibhooti Malhotra, Advocate.

versus

M/S. ALBASTA WHOLESALE SERVICES LIMITED

..... Respondent

Through: None.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **19.07.2019**

C.M.No.32144/2019 (Exemption)

1. Allowed, subject to all just exceptions.

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2. This appeal has been filed by the Revenue against the order dated 4th February, 2019 passed by the ITAT in ITA No. 6546/Del/2015 for Assessment Year 2011-12.

3. The short question urged by the Revenue is whether the Income Tax Appellate Tribunal (ITAT) erred in confirming the order of the Commissioner of Income Tax (Appeals) [‘CIT (A)’] and allowing the claim of the Assessee of Rs. 35,42,20,000/- as foreign exchange fluctuation loss

under Section 37 of the Act?

4. Learned counsel for the Revenue has drawn the attention of the Court to the order dated 24th March, 2014 passed by the Assessing Officer under Section 143(3) of the Act setting out the case of the Assessee as regards the above loans. The Assessee has indicated the amount given by it as loan to its subsidiary in the United States of America (USA) and the amount realized on the liquidation of such subsidiary and claimed the difference therein as 'exchange loss'. Without conducting any inquiry of the fact whether there was any loss on account of the fluctuation in the foreign exchange and rate of the US Dollar within the relevant time, the AO simply disallowed the above amount. This is despite the return being scrutinized under Section 143(3) of the Act.

5. The disallowance could not have been without a preceding inquiry into the claim made by the Assessee. In fact the ITAT in its order noted the submission on behalf of the Assessee that as against US $ 10 million given as loan it received US$10,01,50,000 and US$ 1,50,000 was offered as income of the Assessee for the current AY which was accepted by the AO. However, due to fluctuation in the rate of $ vis-a-vis Rupee, the Assessee realized Rs. 443,07,10,000/-. The difference between the Rupee value of the 10 million US$ advanced in 2008 and received back in 2010 was Rs. 35,42,20,000/- (478,49,30,000 minus 443,07,10,000). This difference was claimed as loss on account of foreign exchange fluctuation. Therefore, the CIT and ITAT were right in reversing the above disallowance.

6. No substantial question of law arises from the impugned order of the ITAT. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 19, 2019
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