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

% ***Decision delivered on: 11.12.2023***

\+ **W.P.(C) 8909/2022**

M/S ESTER INDUSTRIES LTD. ..... Petitioner

Through: Mr R. Santhana, Adv.

versus

THE ASSESSING OFFICER, NFAC DELHI & ANR ... Respondents

Through: Mr Sanjeev Menon, Standing Counsel.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. On the previous date i.e., 04.10.2023, we had noted the following:

> *"2. The record shows that a coordinate bench of this court on 08.09.2022 had passed the following order:*
>
> > *"Today, learned counsel for the respondent has handed over in Court an order dated 06th September, 2022 passed by the Jurisdictional Assessing Officer under Sections 154/254/250/143(3) read with Section 254 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The said order reads as under:-*
> >
> > > *"The assessee has filed its return of income for AY 2005-06 on 31.10.2005 declaring Nil income after adjusting unabsorbed depreciation of Rs.17,61,29,318/- and declared book profit of Rs 9,62,98,591 u/s 115JB of the Income-tax Act. 1961 (referred to as 'the Act' hereinafter).*
> > >
> > > *2. The case was selected for scrutiny and assessment*

u/s 143(3) of the Act was completed on 28.12.2007 with addition of Rs.68,94,045/-. The income was computed at Nil after the set off with the unabsorbed deprecation of Rs.18,30,23,363/-. The book profit was computed u/s 115JB of the Act with addition of Rs.5,00,91,000/- which resulted book profit of Rs.14,63,89,591/-

3. The assessee filed appeal against the order of the AO before Ld. CTT(A) who vide his order dated 14.11.2014 partly allowed the appeal of the assessee. The assessee for getting further relief has filed appeal before Hon'ble ITAT who vide its order dated 15.12.2020 in ITA No. 1138/Del/2015 set aside the order to the file of AO for verification of the claim of the assessee on issue of disallowance of short term capital loss of Rs.1,16,64,344/- u/s 94(7) of the Act for verification.

4. The AO vide order dated 31.03.2022 u/s 1413(3) r.w.s 254 of the Act upheld the earlier assessment passed by the AO on this issue and disallowed the short term capital loss amounting to Rs. 1,16,64,344/- u/s 94(7) of the Act.

Thereafter, the assessee has application dated 26.04.2022 to rectify the order of the AO passed u/s 143(3) r.w.s 254 of the Act on 31.03.2022 stating that

"The AO has not set off the income assessed with available unabsorbed depreciation amounting to Rs.18,30,23,363/- while commuting of income for AY 2005-06."

5. The application of the assessee has been examined and found correct. On perusal of the tax computation for AY 2005-06, it is observed that the AO has taken income of Rs. 18,30,.23,363/-but had not set off it against the available unabsorbed depreciation of Rs.18,30,23,363/-. The mistake mentioned above being apparent from records is hereby rectified u/s 154 of the Income Tax Act, 1961."

However, learned counsel for the petitioner states that the petitioner has still some grievances as the petitioner has been disallowed short term capital loss of Rs.1,16,64,344/- under Section 94(7) of the Act and the Assessing Officer has not given effect to the order passed by the Tribunal.

Learned counsel for the respondent prays for some time to obtain instructions.

List on 14th October, 2022."

3. A perusal of the aforementioned order will disclose that a substantial part of the grievance raised before this court had been addressed, except the matter concerning disallowance of short-term capital loss amounting to Rs.1,16,64,344/- under Section 94(7) of the Income Tax Act, 1961 [in short, "Act"].
4. According to the petitioner, the concerned Assessing Officer (AO) had not given effect to the order passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
5. Mr R. Santhana, counsel who appears on behalf of the petitioner/assessee, says that since the aforementioned order dated 06.09.2022 passed by the Jurisdictional Assessing Officer (JAO) under Sections 154/250/143(3) read with Section 254 of the Act, which is referred to in the coordinate bench's order dated 08.09.2022, the JAO has passed a further order dated 12.10.2022.
6. According to Mr Santhana, what remains is the aspect, as noticed above, concerning short-term capital loss.
7. In these circumstances, the officer who passed the order dated 12.10.2022, i.e., Deputy Commissioner of Income Tax, Circle 7(1) is directed to examine the issue concerning the grievance that the petitioner has with regard to disallowance of short-term capital loss for the purposes of carrying forward.
8. Mr Santhana says that the relevant documents are already on record.
9. This exercise will be completed within four weeks from the date of receipt of a copy of the order passed today.
10. List the matter on 11.12.2023.
11. The Registry will scan and upload the order dated 12.10.2022 placed before us by Mr Santhana so that it remains embedded in the case file."

2. Given the aforesaid circumstances, the Deputy Commissioner of Income Tax, Circle 7(1) is directed to grant hearing to the petitioner and pass a speaking order concerning the issue involving short-term capital loss.

3. Having regard to the direction that we had issued, Mr R. Santhana, counsel who appears on behalf of the petitioner/assessee, says that the writ petition can be closed, with liberty to the petitioner/assessee to take recourse to an appropriate remedy, as per law, in case the order passed is adverse to

the interest of the petitioner/assessee. It is ordered accordingly.

4. Parties will act based on the digitally signed copies of the order.

(RAJIV SHAKDHER)
JUDGE

(GIRISH KATHPALIA)
JUDGE

DECEMBER 11, 2023
as

Click here to check corrigendum, if any