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

\+ ITA 608/2019

PR. COMMISSIONER OF INCOME TAX – 8 ..... Appellant
Through: Mr. Sanjeev Menon, JSC for Mr. Zoheb Hossain, SSC.

versus

M/S. SRL LIMITED (EARLIER KNOWN AS SUPER RELIGARE LABORATORIES LTD.) ..... Respondent
Through: Ms. Kavita Jha, Mr. Vaibhav Kulkarni & Mr. Udit Naresh, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

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

% **19.01.2024**

1. Having heard learned counsels for parties we find that the Income Tax Appellate Tribunal ["**ITAT**"] has essentially affirmed the view taken by the Commissioner of Income Tax (Appeals) ["**CIT(A)**"] and which had set at naught the assumption of jurisdiction in terms of Section 147 of the Income Tax Act, 1961 ["**Act**"]. While dealing with the aspect of re-assessment the ITAT has taken note of the following findings and conclusions as were arrived at by the CIT(A):

> "**7.** We have heard both the parties and perused all the records. It is pertinent to note that while deciding the issue on the legal aspect the CIT(A) held that the order passed u/ s 147/143(3) of the Act is bad in law. The CIT(A) held as under:
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> > *"3. I have considered the assessment order, written submissions filed by the Ld. AR of the appellant and also perused the original order passed u/ s 143(3) of the I. T.*

Act. From the reasons recorded, it is clear that facts mentioned in the reasons recorded are not pertaining to the appellant. The total sales mentioned in the reasons recorded is 8,30,47,926/-. However, from the first line of the assessment order, it is clear that appellant has declared return income of Rs.8,26,20,230/- on 28-09-2008.

3.1 I agree with the arguments with the Ld. AR of the appellant that Assessing Officer has not considered the directions of the Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd. v. ITO 259 ITR 19 (SC). Ld. Assessing Officer has not considered the objection of the appellant and also not disposed off by a speaking order. Further Ld. Assessing Officer has also not considered the explanation filed by the appellant during the reassessment proceedings and mechanically added Rs.6,53,980/- as a difference of sales which is recorded in the reasons of reopening the assessment . Ld. Assessing Officer further made an addition u/ s 40(a)(ia) amounting to Rs.11,14,54,029/- without discussing the issue and' also without verifying the facts. After considering the all facts, I find that while passing the first assessment order u/s 143(3) dt. 20-12-2010, Ld. Assessing Officer considered the total discount of Rs.2,96,61,306/-, the discount aggregating to Rs.18,51,59,032/- offered to collection centres and for international business was disallowed on account of reasons mentioned in that assessment order and the balance discount of Rs.11,14,54,029/- offered to Doctor clinics, Hospitals, Nursing Homes· and Appellant's own House was allowed as deductible expenditure. This fact clearly indicates that whole amount of discount declared 'by the appellant was investigated and it was considered by the Ld. Assessing officer at the time of original assessment proceedings. From the re-assessment proceeding, it is not clear what was the new fact which was not disclosed by the appellant truly & fully on which Ld. Assessing officer has formed an opinion that TDS was deductible on discount claimed amounting to Rs.11,14,54,029/-. After considering all these facts, I find that Ld. Assessing Officer has not verified the facts of the case and also recorded the reason without application of mind in a mechanical manner. It is a mere change of opinion by the Ld. Assessing officer without any reason. Since, the reasons recorded is on erroneous facts, I hold that Ld. Assessing Officer has wrongly assumed the jurisdiction u/ s 14 7 of the I. T. Act. The order passed by the Ld. Assessing Officer u/s 147/ 143(3) of the I. T. Act is illegal and bad in law. Hence, it is cancelled. The *additions made by the Ld.* Assessing *Officer are without any basis. Hence, same are also order to be deleted.*

4. In the result, appeal is *treated* as *allowed."*

Thus, from the findings of the CIT(A) as well as the reasons recorded by the Assessing Officer for re-opening, it is crystal clear that there is merely a change of opinion and the Original Assessment Order u/s 143(3) was clearly verified all the factors. Therefore, the CIT(A) rightly decided the legal issue in favour of the Assessee. There is no need to interfere with the findings of the CIT(A). Therefore, Ground No. 1 of t he Revenue's appeal is dismissed.

2. It is on the aforesaid basis that the ITAT has ultimately come to conclude that the re-opening was premised solely on a change of opinion.

3. On an overall consideration of the aforesaid, we find no merit in the appeal. It shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

JANUARY 19, 2024/kk