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

\+ ITA 288/2022

THE PR COMMISSIONER OF INCOME TAX-6

..... Appellant

Through: Mr. Ruchir Bhatia, Sr.SC with Ms. Deeksha Gupta, Adv.

versus

NALWA STEEL AND POWER LIMITED ..... Respondent

Through: Ms. Ananya Kapoor, Mr. Shivam Yadav, Mr. Tarun Chanana and Mr. Sumit Lalchandani, Advs.

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

O R D E R

% **06.03.2024**

1. The Principal Commissioner challenges the order dated 10 October 2019 passed by the Income Tax Appellate Tribunal ["**ITAT**"] and has proposed the following questions for our consideration:

> 2.1 Whether on the facts and circumstances of the case, the ITAT was justified in deleting the adjustment made on account of managerial remuneration while the TPO has established that excessive payment was made to Ms. Shallu Jindal?
>
> 2.2 Whether on the facts and circumstances of the case, the ITAT justified in holding that Ms. Shallu Jindal, who happens to be close relative to promoters Shri O.P. Jindal "was key personnel in respect of various policy decision which was reflected in minutes of various board

meetings" whereas per record available with Transfer Pricing Officer [“**TPO**”], it was noticed that Shallu Jindal did not attend even a single Board Meeting and details furnished by the Assessee during TPO proceedings revealed that Ms. Shallu Jindal was active in social commitments only. The ITAT failed to appreciate that the assessee did not submit details with respect to Ms. Shallu Jindal called by TPO during TP proceedings. Perversity of facts has been held to be question of law"?

2.3 Whether on the facts and circumstances of the case, the order of the ITAT is perverse in not holding that the price at which State Electricity Board sells electricity to industrial consumers is representative of the price that electricity would ordinarily fetch in the open market in terms of section 80-IA (8) of the Income Tax Act, 1961 [“**Act**”]?

2.4 Whether on the facts and circumstances of the case, the order of the ITAT is perverse in allowing relief to the assessee based on its order for Assessing Year [“**AY**”] 2013-14, when the rate of electricity adopted by Assessing Officer [“**AO**”], in the present year, is the average rate for Chhattisgarh region, as received from India Energy Exchange, whereas the rate of electricity adopted by AO in AY 2013-14 was that which was paid by Chhattisgarh State Power Distribution Company Ltd. for purchasing power?

2.5 Whether on the facts and circumstances of the case, the ITAT was justified in not allowing the allocation of common expenses under Section 80-IA of the Act to eligible and non-eligible unit on the basis of ratio between eligible and non-eligible units?

2.6. Whether on the facts and circumstances of the case, ITAT erred in deleting the addition of Rs.69,46,170/- made by the AO on account of expenditure on Corporate Social Responsibility?

2. As would be evident from a perusal of the questions which are proposed, most of the issues which are sought to be canvassed would be governed by the judgment rendered today in ITA 725 of 2019.

3. The only additional issue which remains is with respect to the validity of the deletion of an addition of INR 69,46,170/- on account of expenditure under the head of "*Corporate Social Responsibility*". While dealing with this question, the ITAT has essentially followed the judgment rendered for AY 2013-14 which formed subject matter of consideration in ITA 725 of 2019. We, however, note that in the appeal for that year, no challenge on this score was either raised or addressed.

4. In view of the aforesaid, we find no justification to entertain the instant appeal on this question which consequently, shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 06, 2024/p