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

\+ ITA 132/2023 & CM APPL 10886/2023

SHOURYA TOWERS PVT LTD ..... Appellant

Through: Mr. Salil Aggarwal, Sr. Advocate alongwith Mr. Madhur Aggarwal, Mr. Ruches Sinha and Mr. Uma Shankar, Advocates

Versus

PR COMMISSIONER OF INCOME TAX ..... Respondent

Through: Mr. Ruchir Bhatia, Sr. SC.

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

ORDER

% **09.04.2024**

1. This appeal is directed against the order dated 29 August 2017 rendered by the Income Tax Appellate Tribunal ["**ITAT**"] and has proposed the following questions for our consideration:-

> "A. Whether, the Income Tax Appellate Tribunal is correct in law and on facts of the case in upholding the disallowance of loss being written off on account of Amritsar project of a sum of Rs. 64,72,52,645/- for the assessment year under consideration, by holding that the same does not pertain to the assessment year in question?
>
> B. Whether, the Income Tax Appellate Tribunal has failed to appreciate that there being no change in the tax rates and it does not matter in which year the loss could be claimed or allowed?
>
> C. Whether, the Income Tax Appellate Tribunal has failed to appreciate that the aforesaid loss was never ever claimed in the past as the same stood crystallized in the impugned assessment year and was allowable as such, in the impugned assessment year?

D. Whether the findings of the Income Tax Appellate Tribunal are perverse and also contrary to material available on record in particulars to the paper-book and the supplementary paper book and have also been recorded by overlooking various important documents/ submissions/case laws which have been clearly ignored while dismissing the appeal of the Appellant?

E. Whether on the facts and circumstances of the case, the ITAT, while dismissing the MA of the Appellant, has erred in law in placing reliance· on the judgement of Reliance Telecom Ltd. (SC) in the given facts of the case and simultaneously ignoring the ratio of the judgments of other case laws i.e. Honda Siel Power Products Ltd Vs. CIT (SC), ACIT Vs. Saurashtra Kutch Stock Exchange Ltd (SC)?

F. Whether on the facts and circumstances of the case, the ITAT while dismissing the MA of the Appellant, has erred in law in not considering that the interpretation given by the ITAT on the given facts of the case, shall make the provision of section 254(2) otiose and shall mean that the mistakes which are glaring and are apparent from record, even such mistakes cannot be rectified?"

2. The principal grievance of the appellant stands comprised in proposed question (D) since it was contended that despite a supplementary paper book having been duly filed before the ITAT and which had direct relation to the issue of disallowance of loss, the same was neither considered nor noticed. It is this aspect which was also noticed by us in the original order that was passed on 07 March 2023.

3. Although, the assessee thereafter proceeded to file two miscellaneous applications, those two came to be dismissed by the ITAT and which took the position that once it had rendered a judgment on merits, it was rendered functus officio.

4. Since the supplementary material, which was sought to be relied upon had an indelible connect with questions (A), (B) and (C), we are of the considered opinion that the ends of justice would warrant the instant appeal being allowed and the matter being remitted to the ITAT for considering the appeal afresh.

5. Consequently, the order dated 29 August 2017 is set aside and the matter is remitted to the ITAT for considering the issues afresh.

6. The ITAT shall consider the appeal afresh taking into consideration the supplementary paper book which had been placed for its consideration. All rights and contentions of parties are kept open.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 9, 2024
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