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

\+ ITA 328/2019

THE PR. COMMISSIONER OF INCOME TAX-9
..... Appellant

Through: Mr. Shlok Chandra, Sr. SC with Ms. Madhavi Shukla and Ms. Priya Sarkar, Jr.SCs along with Mr. Ujjwal Jain, Adv.

versus

THYSSENKRUPP ELEVATOR (INDIA) PVT. LTD.
..... Respondent

Through: Mr. Rajan Bhatia, Adv.

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

O R D E R

% **12.02.2024**

1. Pursuant to the liberty granted on the earlier occasion, Mr. Chandra, learned counsel appearing for the appellant states that the instant appeal may be taken as being limited to the order dated 14 September 2018 of the Income Tax Appellate Tribunal ["**ITAT**"] insofar as it rejects Appeal No. 871/2014. We note that the appellant seeks admission of the instant appeal on the following proposed question of law:

> "A Whether the ITAT has erred in ignoring the fact that the amount received as advance from the customers by the assessee had been shown in the Balance Sheet of the assessee as a liability without routing it through Profit

and Loss Account which is not permissible under the accrual/mercantile system of accounting as prescribed under the Companies Act, 2013?"

2. However, learned counsel for the respondent has drawn our attention to the order passed by this Court in ITA 1182 of 2018 in which an identical question stood raised and where the Revenue had conceded to the matter being concluded against it in light of judgment rendered by the Supreme Court in **Taparia Tools Ltd. vs. Joint Commissioner of Income Tax** [2015 SCC OnLine SC 729].

3. The order dated 27 July 2023 passed in the aforesaid appeal reads thus:

> "1. This appeal concerns Assessment Year (AY) 2005-06.
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> 2. Via this appeal, a challenge is laid to the order dated 07.11.2017, which concerns not only AY 2005-06, but also relates to AYs 2006-07 and 2007-08. We may note that there were cross appeals filed in AYs 2005-06 and 2007-08.
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> 3. Insofar as the instant appeal is concerned, the appellant/revenue has proposed the following question of law:
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>> *"i) Whether on the facts and circumstances of the case and in law, the Ld. Tribunal was right in deleting the addition made by the Assessing Officer on account of advance from customers failing to note and appreciate that these amounts constituted income liable to be taxed in the assessment year under consideration?*
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> 4. Mr Assem Chawla, learned senior standing counsel, who appears on behalf of the appellant/revenue, informs us that the proposed question is covered in favour of the respondent/assessee, by the judgment of the Supreme Court in ***Taparia Tools Ltd. vs. Joint Commissioner of Income Tax***, (2015) 55 Taxmann.com 361(SC).
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> 6. In view of the aforesaid submissions, no interference is called for qua the impugned order which has been passed by the Tribunal, as no substantial question of law arises for consideration.
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> 7. The appeal is, accordingly, closed."

4. Accordingly, and following the aforesaid decision, we dismiss the instant appeal.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 12, 2024/p