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

\+ ITA 309/2023, CM APPL. 28964/2023(Addl. Document) & CM APPL. 28965/2023 (Stay)

BOSTON SCIENTIFIC INDIA PRIVATE LIMITED ..... Appellant

Through: Mr. Deepak Chopra, Adv.

versus

COMMISSIONER OF INCOME TAX & ANR. ..... Respondents

Through: Mr. Sanjeev Menon, Jr. Standing Counsel for Mr. Zoheb Hossain, Sr. Standing Counsel.

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

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

% **09.02.2024**

1. The appellant / assessee has approached this Court aggrieved by the order made by the Income Tax Appellate Tribunal ["**ITAT**"] dated 13 March 2023 and insofar as it returns adverse findings in respect of consultancy agreements which the assessee had entered into with medical practitioners.

2. As is evident from a reading of paragraphs 19 and 20 of the order of the ITAT, this aspect appears to have been raised for the first time before the ITAT and in light of the judgment rendered by the Supreme Court in M/s Apex Laboratories Private Limited vs. Deputy Commissioner of Income Tax, Large Tax Payer Unit-II [**(2022) 7 SCC 98**]. It is in the aforesaid backdrop that the appellant / assessee has also prayed for additional material and documentation being taken on record of the present appeal.

3. Before us it is not disputed that the doubt with respect to the validity of the consultancy agreements was an issue which was raised for the first time before the ITAT. That appears to have occurred in light of the judgment of the Supreme Court which had come to be recently rendered. In that view of the matter, it is apparent that the assessee did not have an adequate opportunity to establish the bona fides of those agreements. In view of the aforesaid and in our considered opinion, the matter would merit being remanded to the ITAT for consideration in the first instance.

4. In view of the aforesaid, we allow the instant appeal and set aside the order dated 13 March 2023 insofar as it pertains to the issue of paid consultancy fees. In terms of the remand made today, we accord liberty to the appellant / assessee to place additional documents and evidence before the ITAT.

5. We also leave it open to the ITAT to evaluate and examine whether a factual exercise can be undertaken at its level itself or whether the matter would have to be remitted to the Assessing Officer ["**AO**"].

6. Subject to the observations aforenoted, this appeal along with pending applications stands disposed of on the aforesaid terms.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 09, 2024/RW