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

\+ ITA 397/2023

MATRIX CELLULAR -INTERNATIONAL- SERVICES PRIVATE LIMITED ..... Appellant

Through: Mr. Manuj Sabharwal, Ms. Shalini and Mr. Sudip Lodh, Advs.

versus

JOINT COMMISSIONER OF INCOME-TAX SPECIAL RANGE 6, NEW DELHI ..... Respondent

Through: Mr. Sanjeev Menon, JSC for Mr. Zoheb Hossain, SSC.

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

**O R D E R**

**% 01.02.2024**

1. This appeal is directed against the order dated 18 January 2023 passed by the Income Tax Appellate Tribunal ["**ITAT**"] for Assessment Year ["**AY**"] 2016-2017. As would be evident from the questions of law which are proposed for our consideration, the issue essentially pertains to the deduction which is now being claimed by the assessee in respect of amounts deposited as "*Swachh Bharat Cess*". Undisputedly, and as per the admitted case of the appellant, the aforesaid payments were placed in the category of "*write off of sundry balances*".

2. Bearing in mind the aforesaid, ITAT has come to record the following conclusion:

> "23. We have considered rival submissions and perused material on record. As could be seen, the amount written off represents Swachh Bharat Cess receivable by the assessee. The assessee has failed to demonstrate that the amount was actually paid during the year in terms of section 43B(a) of the Act. Therefore we uphold the disallowance. This ground is dismissed."

3. Before us, learned counsel for the appellant contends that although the *Swachh Bharat Cess* was shown under the category of "*write off of sundry balances"*, it essentially related to amounts paid as cess by the assessee / appellant in the year in question. According to learned counsel, the ITAT has for the first time proceeded to advert to Section 43B(a) of the Income Tax Act, 1961 ["**Act**"] and allowed the disallowance altogether.

4. Bearing in mind the aforesaid stand raised, we are of the considered opinion that insofar as this aspect is concerned, it would merit reconsideration by the Assessing Officer ["**AO**"].

5. We, accordingly allow the instant appeal in part and set aside the findings of the ITAT insofar as this aspect is concerned. The matter shall stand remitted to the AO for considering the claim of the appellant afresh.

6. All rights and contentions of parties are kept open.

**YASHWANT VARMA, J.**

**PURUSHAINDRA KUMAR KAURAV, J.**

**FEBRUARY 01, 2024/p**