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

\+ ITA 797/2019

THE PR. COMMISSIONER OF INCOME TAX -6

..... Appellant

Through: Mr.Sunil Agarwal, Sr.SC with Mr.Utkarsh Tiwari, Adv.

versus

NALWA STEEL & POWER LIMITED ..... Respondent

Through: Ms.Ananya Kapoor, Mr.Salil Kapoor, Mr.Sumit LalChandani and Mr.Shivam Yadav, Advs.

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

ORDER

% **19.01.2024**

1. Having heard learned counsels for parties and on perusal of the record, we find that the appellants sought the admission of the instant appeal on the following two questions: -

(a) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal ["**ITAT"]** was justified in law in deleting the addition of Rs.4,82,99,004/- made on account of disallowance of deduction under Section 80IA(8) of the Income Tax Act,1961?

(b) Whether on the facts and in the circumstances of the case, the ITAT was justified in law in directing to deduct the cost of reject coal and iron ore fine dust for determining the disallowance to be made under section 80IB of the Income Tax Act, 1961?

2. In so far as the issues raised in question (a) are concerned, our attention was drawn to the following conclusions as rendered by the Supreme Court in **Commissioner of Income Tax v. M/s. Jindal Steel & Power Ltd.** [2023 SCCOnLine SC 1632]

> "**73.** Thus, market value of the power supplied by the assessee to its industrial units should be computed by considering the rate at which the State Electricity Board supplied power to the consumers in the open market and not comparing it with the rate of power when sold to a supplier i.e., sold by the assessee to the State Electricity Board as this was not the rate at which an industrial consumer could have purchased power in the open market. It is clear that the rate at which power was supplied to a supplier could not be the market rate of electricity purchased by a consumer in the open market. On the contrary, the rate at which the State Electricity Board supplied power to the industrial consumers has to be taken as the market value for computing deduction under Section 80IA of the Act.
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> **75**. Thus on a careful consideration, we are of the view that the market value of the power supplied by the State Electricity Board to the industrial consumers should be construed to be the market value of electricity. It should not be compared with the rate of power sold to or supplied to the State Electricity Board since the rate of power to a supplier cannot be the market rate of power sold to a consumer in the open market. The State Electricity Board's rate when it supplies power to the consumers have to be taken as the market value for computing the deduction under Section 80-IA of the Act.
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> **76**. That being the position, we hold that the Tribunal had rightly computed the market value of electricity supplied by the captive power plants of the assessee to its industrial units after comparing it with the rate of power available in the open market i.e., the price charged by the State Electricity Board while supplying electricity to the industrial consumers. Therefore, the High Court was fully justified in deciding the appeal against the revenue.
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> **78**. Before parting with this issue, we may mention that reliance placed by Mr. Rupesh Kumar, learned counsel for the revenue on the definition of the expression "market value" as defined in the explanation below sub-section (6) of Section 80 A of the Act is totally misplaced inasmuch as sub-section (6) was inserted in the statute with effect from 01.04.2009 whereas in the present case we are dealing with the assessment year 2001-2002 when this provision was note even borne."

3. We are apprised that when an identical question was raised in ITA 208/2019 inter partes, the Court had on a perusal of the view taken by the ITAT found that no justification existed for the question in that respect being framed or considered. We, in this regard take note of the order dated 06.03.2019 passed in ITA 208/2019 and consequently observe that proposed question (a) would not give rise to any substantial question of law.

4. That only leaves us to consider whether to admit the appeal on question (b). In so far as the question on reject coal and iron ore is concerned, the ITAT has on a due consideration of the rival submissions which were addressed come to the following conclusions:-

> "6. On this aspect, Ld. AR brought to our notice that this issue was dealt with at length by a coordinate bench of this Tribunal in the order dated 24/4/2018 in ITA No. 4449/de1/2010 and batch for the Assessment Years 2006-07 to 2009-10 in assessee's own case wherein the assessee advanced an alternative plea that if the sale proceeds are not allowed as sale of reject coal and iron ore fine dust and since the costs have already been included there to, the purchase cost of these material have to be deducted.
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> 7. We have gone through the order and vide paragraph No. 49, this aspect was considered by a coordinate Bench of this Tribunal, and while considering the case of the assessee in the light of the decision of the Hon'ble Apex Court in the case of CIT vs. Punjab Stainless Steel Industries vide Civil appeal No. 3288 and 4491 of 2009 and 4898 of 2010, accepted the alternative plea of the assessee and remanded the matter with a direction to the Ld. AO to deduct the sale proceeds of those items from the cost of raw materials used in the manufacturing process and then accordingly determine the profit of the undertaking to allow the deduction under section 80 IB as per the revised profits so computed.
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> 8. <u>In the light of the observations made by a coordinate Bench of this Tribunal in the above case, we have considered the submissions of the assessee in this case also and allow their plea for remanding the matter to the file of the Ld. Assessing Officer for compliance with the above direction. Having regard to the facts and circumstances of the case, while allowing the prayer of the assessee, we set aside the findings of the Ld. CIT(A) on this aspect and remand the matter to the file of the Ld. Assessing Officer for</u>

complying with the above directions, after affording an opportunity to the assessee. Grounds of appeal of the assessee are, therefore, allowed for statistical purposes."

5. Bearing in mind the aforesaid conclusions and the fact that the plea for rejection of sale proceeds from reject coal and iron ore was taken in the alternative, with the assessee claiming that the same if not accepted should be adjusted against the purchase cost and consequently leading to the remand of proceedings to the Assessing Officer, we find no justification to entertain the instant appeal.

6. Consequently, no substantial question of law arises in the instant appeal and we find no justification to interfere with the ITAT's impugned order dated 15 January 2019.

7. The appeal fails and shall stand dismissed on the aforesaid terms.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

JANUARY 19, 2024/MJ