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

\+ ITA 329/2024 & CM APPL. 37727/2024

M/S. CENTRAL WAREHOUSING CORPORATION ....Appellant

Through: Mr. S. Krishnan and Mr. Harshit Chauhan, Advocates

versus

COMMISSIONER OF INCOME TAX .....Respondent

Through: Mr.Vipul Agrawal, SSC with Mr. Gibran Naushad, Ms. Sakshi Shairwal, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MS. JUSTICE TARA VITASTA GANJU

O R D E R

% 29.07.2024

CM APPL. 37727/2024

Bearing in mind the disclosures made, the delay in refiling the appeal is condoned.

The applications shall stand disposed of.

ITA 329/2024

1. The appellant questions the correctness of the order of the Income Tax Appellate Tribunal [“**Tribunal**”] dated 14 November 2023 and posits the following questions for our consideration:-

> “a. Whether even under mercantile system of accounting, only income which has actually 'accrued', is required to be offered for tax?
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> b. Whether income in respect of unclaimed goods stored at CFS / ICD's maintained by the Assessee can be said to accrue merely because the goods continue to be stored indefinitely?
>
> c. Whether ITAT's direction to merely telescope income already offered for tax on receipt basis against Income taxable on accrual basis is misconceived / perverse on the facts of the case, and on an interpretation of section 150(2) of the Customs Act 1962?”

2. However and as has been rightly pointed out by Mr. Aggarwal, learned counsel for the respondent, the aforesaid aspects came to be decided on concession. This would be apparent from a reading of paragraphs 19 to 22 of the order impugned before us and which are reproduced hereinbelow:-

> "19. The Ld. Counsel for the assessee submits that identical issue has been decided by the Tribunal by order dated 31.05.2021 in paras 16 to 16.4 wherein the Tribunal restored the matter to the file of the Assessing Officer with a direction to ascertain income of the bonded warehouses which has been added on mercantile basis and is not subjected to tax on cash basis again in subsequent years. The Ld. Counsel submits that similar direction may be given for the year under consideration also.
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> 20. The Ld. DR has no objection.
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> 21. Heard rival submissions perused the orders of the authorities below. We observe that on perusal of the order of the Tribunal in ITA. No. 3942/Del/2011 for assessment year 2006-07 in Revenue's appeal the Tribunal restored the issue to the file of the Assessing Officer with the following observations. –
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>> "16. The ground No. 6 of the appeal of the Revenue relate addition for income from bonded warehouses amounting to Rs. 7,24,44,000/-, which has been deleted by the Learned CIT(A).
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>> 16.1 The facts in brief qua the issue in dispute are that the assessee operates bonded warehouse under a license given by the customs department, where imported consignments are being deposited by the importers to enable them to take delivery of the consignment by paying custom duty and warehousing charges at the time of the actual release of the imported goods. These warehousing charges are being accounted by the assessee on realisation basis. The contention of the assessee that realization of such warehousing charges is uncertain as sometimes paying of custom duty and warehousing charges becomes commercially unviable to the importer and therefore importers are not induced to take delivery of such consignment. According to the Assessing Officer, the assessee is following Mercantile system and therefore income has to be booked as and when it is accrued to the assessee. The Assessing Officer noted that even if

the importer decided not to get his cargo released, the warehousing charges is payable to the assessee Corporation from the auction proceeds of the cargo. Accordingly, the learned Assessing Officer made addition for the amount of Rs. 7,24,44,000/-for bonding warehouse on accrual basis. The Ld. CITA) following the finding of his predecessor that there was uncertainty in the income of the bonded warehouse, he deleted the addition made on this account.

16.2 Before us, the learned DR submitted that the assessee cannot be allowed for both cash and Mercantile system of accounting i.e. mixed accounting system. He submitted that the assessee follows Mercantile system of accounting and accordingly the income is taxable whenever it is accrued or received whichever is earlier and thus income of bonded warehouse is liable to be assessed in the year under consideration.

16.3 On the other hand, the Learned Counsel of the assessee concurred that there cannot be mixed accounting system and income has to be taxed on the accrual basis in the case of the assessee, however, he submitted that the income offered by the assessee on cash basis should be reduced. Accordingly, he submitted that issue in dispute may be restored back to the file of the Learned Assessing Officer for working out the quantum of income to be taxed."

16.4 We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. In the case, the assessee has credited the income from the bonded warehouse on realisation basis i.e. cash basis, but the assessee is following Mercantile system of the accounting and therefore income has to be credited in the profit and loss account as and when it is accrued to the assessee. The Assessing Officer has added the income from warehousing charges which is accrued during the year under consideration. The learned Counsel has agreed in principle that warehousing charges is liable to be assessed on accrual basis in view of Mercantile system followed by the assessee, but he emphasized that income which has been tax on accrual basis in the year under consideration, should not subjected to tax twice i.e once on Mercantile basis and second on cash basis. We concur with the above contention of the Learned

Counsel of the assessee. Accordingly, the bonded warehouse income added by the Assessing Officer on accrual basis, is hereby confirmed, however, the Assessing Officer is directed to ascertain that, bonded warehouse income which has been added on mercantile basis in the year under consideration, is not again subjected to tax on cash basis in subsequent years. The ground No. 6 of the appeal of the Revenue is accordingly, partly allowed for the statistical purposes."

22. Following the order of the Tribunal we restore this issue to the file of the Assessing Officer with direction to decide the issue afresh keeping in view the observations of the Tribunal for the assessment year 2006-07. Needless to say adequate opportunity of being heard to the assessee be provided by the Assessing Officer. Ground No. 3 of the grounds of appeal of the Revenue and ground Nos. 6 to 10 of grounds of appeal of the assessee are allowed for statistical purposes."

3. In view of the evident concession made by the appellant, we find no justification to entertain this appeal.

4. It shall consequently stand dismissed.

YASHWANT VARMA, J.

TARA VITASTA GANJU, J.

JULY 29, 2024/neha