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

\+ W.P.(C) 9348/2024 & CM APPL. 38310/2024 (stay)

NORTEL NETWORKS
INDIA PRIVATE LIMITED .....Petitioner

Through: Mr. Salil Kapoor, Mr. Sumit Lalchandani, Mr. Vibhu Jain and Ms. Ananya Kapoor, Advocates.

versus

ADDL COMMISSIONER OF INCOME TAX SPECIAL RANGE 6 NEW DELHI AND ANR .....Respondents

Through: Mr. Abhishek Maratha, SSC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

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

% **27.08.2024**

1. Having heard Mr. Lalchandani, learned counsel appearing in support of the writ petition as well as Mr. Maratha, learned counsel who represents the respondents, we take note of the following undisputed facts which emerge from the record.

2. On 19 August 2019, the Income Tax Appellate Tribunal ['**Tribunal**'] had proceeded to dismiss the appeal on account of low tax effect. The Department is stated to have moved a Miscellaneous Application seeking recall of the aforesaid order and which has been allowed by the Tribunal in terms of an order dated 29 July 2022. The Tribunal in its order has observed as follows: -

> "4. We have heard the rival submissions and considering the submission made by the Revenue, in the Miscellaneous Application, we find that the Tribunal had dismissed the appeal of

> the Revenue on account of low tax effect by considered the case to be the low tax effect. Before us, Revenue has pointed out that the appeal filed by Revenue is against the relief granted by CIT(A) of Rs. 6,87,70,775/- and Rs. 8,61,021/- and the tax effect on such addition is more than limits stipulated in the aforesaid Circular. The contentions of the Learned DR has not been controverted by Learned AR. In such a situation, we find that there is an apparent mistake in the order of Tribunal. We therefore recall the order in ITA No.503/Del/2017 dated 17.08.2019 and direct the registry to fix the aforesaid appeal for hearing on 06.10.2022. Since the date of hearing of the aforesaid appeal is pronounced in the open court, no separate notice of hearing is required to be issued to the parties."

3. As we go through paragraph 4 of the order impugned, we find that the view taken by the Tribunal is clearly rendered unsustainable since it proceeds on the following incorrect assumptions.

4. We note that the respondents in their appeal before the Tribunal had restricted their challenge to the order of Commissioner of Income Tax (Appeals) ['**CIT(A)**'] to the extent of disallowance of INR 71,03,752/. This is evident from the grounds of appeal itself and which was an aspect noticed in our order of 10 July 2024 itself.

5. If the challenge were restricted to a disallowance of INR 71,03,752/- alone, the tax effect would amount to INR 23,59,629/- and thus would be below INR 50,00,000/-, which is the prescribed monetary limit by Circular dated 08 August 2019 for the Department for filing an appeal before the Tribunal.

6. Similarly, we find that insofar as the amount of INR 8,61,021/- was concerned, the same was allowed against the assessee and consequently, could not have possibly formed subject matter of challenge in the appeal of the respondents. In view of the aforesaid, we find ourselves unable to sustain the impugned order.

7. The writ petition is accordingly allowed. The impugned order dated 29 July 2022 is hereby quashed and set aside.

8. The Miscellaneous Application shall consequently stand revived on the board of the Tribunal to be examined afresh bearing in mind the observations made hereinabove.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 27, 2024/*vp*