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

\+ ITA 1489/2018

THE PR. COMMISSIONER OF INCOME TAX -4

..... Appellant

Through: Mr. Sanjay Kumar, Ms. Easha and Ms. Hemlata Rawat, Advocates

Versus

M/S HUMBOLDT WEDAG INDIA PVT. LTD...... Respondent

Through: Mr. Arijit Chakravarty, Advocate

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

O R D E R

% **13.03.2024**

1. The Commissioner impugns the order of the Income Tax Appellate Tribunal ["**ITAT**"] dated 18 September 2017 and has proposed the following questions for our consideration.

> "2.1 Whether ITAT is legally justified in partially modifying the direction of Commissioner of Income Tax under section 263 of the Income Tax Act, 1961 even after holding that CIT was legally justified assuming jurisdiction u/s 263 of the Act?
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> 2.2 Whether failure to make enquiry by the Assessing Officer (the AO) on allowability of provisions of warranty by the assessee in the profit, and loss account could legally be held as erroneous and prejudicial to interest of revenue under section 263 of the Act?"

2. As would be evident from a reading of the order impugned, the appellant appears to have been aggrieved by the order passed by the

Commissioner of Income Tax ["**CIT**"] while exercising powers under Section 263 of the Income Tax Act, 1961 ["**Act**"].

3. We note that while dealing with the view which was taken by the CIT, the ITAT has held as follows:-

> "22. Therefore according to the above accounting standard it is apparent that reliable estimate of the obligation with respect to the provision of warranties required to be made. According to us the assessee has fulfilled these obligation in the present case. Furthermore, the issue was examined by the assessing officer during the course of assessment proceedings and has taken a one view that the above provision is in accordance with the law. In the order under section 263 passed by the Ld. CIT has held that it has to be unscientific basis but on reading the decision of Hon'ble Supreme Court in case of Rotork controls (supra). It is held that:-
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> > "As stated above, it would depend on the nature of business, the nature of sales, the nature of the product manufactured and sold and the scientific method of accounting being adopted by the assessee. It will also depend upon the historical trend. It would also depend upon the number of articles produced. As stated above, if it is a case of single item being produced then the principle of estimation of contingent liability on *pro rata* basis may not apply. However, in the present case, it is not so. In the present case, we have the situation of large number of items being produced. They are sophisticated goods. They are supported by the historical trend, namely, defects being detected in some of the items. The data also indicates that the warranty cost(s) is embedded in the sale price. The data also indicates that the warranty is attached to the sale price."
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> In view of this, it is not necessary that it is to be based on some scientific method only. It can also be on the basis of past trend and on the history of the manufactured goods. In the present case assessee is engaged in the business of cement plants and therefore it may have the unique method of provision of warranties. It is also a fact that the warranties already embedded in the sale price quoted by the assessee**,** and for which it is already been offered for the taxation. The Ld. CIT has further failed to give any methodology which can be a sound technical and scientific method for estimating the provision of warranty. Therefore according to us the issue of warranty provision was examined and one of the possible view has been taken by the Ld. assessing officer which is also supported by the decision of the Hon'ble Supreme Court, in view of

this, it cannot be said that the order under section 143 (3) of the income tax act of the Ld. assessing officer allowing the above claim of warranty expenditure is erroneous. It cannot also become erroneous for the simple reason that it is not been dealt with in the assessment order. Generally if the claim of the assessee is found acceptable by the Ld. assessing officer then naturally the cannot be any reference of the same in the assessment order. If the view of the revenue is accepted that the issue is not mentioned in the assessment order, the claim is allowed by the assessing officer becomes erroneous, then the assessment order would itself become the cumbersome and most of it would not be worth reading at all. In view of this we are of the opinion that on the issue of a liability of the warranty provision there is no error in the order of the Ld. assessing officer and Ld. CIT has wrongly assumed jurisdiction.

23. Coming to the 2nd issue of direction to the Ld. assessing officer With respect to claim of the bogus expenses of Rs. 4.38 crores. The Ld. CIT has given a direction to the assessing officer to take up the matter at the time of reassessment to determine the genuineness or otherwise of the expenses and consider the information received from the investigation wing while passing the assessment. Admittedly, the show cause notice dated 06/12/2012 issued by the Commissioner of income tax did not have any mention about this item. The show cause notice was only concerning the allowability of warranty provisions. Therefore the claim of the assessee is that what is not in the so-called notice cannot enter into the final order under section 263 of the income tax act. However. Hon'ble Supreme Court in case of CIT versus Amitabh Bacchan in 384 ITR 200 has held that Section 263 does not require any specific show cause notice detailing specific grounds on which revision of assessment order is tentatively being proposed affecting initiation of exercise in absence thereof or to require commissioner to confine himself to terms of notice and foreclosing consideration of any other issue or question of fact; Commissioner is free to exercise his jurisdiction consideration of all relevant facts, provided an opportunity of hearing is afforded to assesssee to contest facts on basis of which he had exercised revisional jurisdiction. In view of this according to us. even if an item is mentioned in the so-called notice under section 263 of the act still if the relevant information is available Ld. CIT can assume jurisdiction if it satisfies other conditions. In the present case, the CIT has definitely granted an opportunity of hearing to the assessee on this aspect also and the reply of the assessee is also available at page No. 56 of the paper book. The assessee submitted that assessee has been provided with the Ledger copy of the transactions with the said company who is an accommodation entry providers. However the copy of the statement of Sh. Pravena Agarwal was not provided. The claim of the assessee was before the CIT also that the said transactions are absolutely genuine and the

statement of Sh. Pravena Agarwal who appears to be a stranger cannot lead to any inference that the transaction was bogus transaction. That means proper opportunity of hearing was given by the Ld. CIT to the assessee on this issue. Furthermore, the claim of the assessee is that when the so-called notice was issued the information was not available with the Ld. CIT about these transactions which was received. Subsequently from the investigation wing of the income tax Department. Therefore the claim of the assessee was that the power of the CIT under section 263 of the act must be exercised on the basis of the material was available to him when he exercise the power and for this the reliance was placed on the decision of the Hon'ble Supreme Court in case of CIT versus GM Mittal steel private limited (Supra). We do not find any reason to say that the information was not available with the Ld. CIT when he exercise the power. He exercised the power at the time of passing the order under section 263 of the income tax act and at that time he was in possession of the information on record. In view of this, this argument of the assessee is also rejected. In view of this we find no infirmity in assuming jurisdiction under section 263 of the income tax act on this issue by the ld. CIT. Furthermore, the Ld. authorised representative could not show us any evidence by which it can be shown that at the time of passing the assessment order under section 143 (3) of the income tax act. The Ld. assessing officer has examined the impugned expenditure at all. And therefore it is apparent that Ld. assessing officer has not at all examined any detail about these expenditure, therefore, the order of the Ld. assessing officer is erroneous as well as prejudicial to the interest of the revenue to that extent. Hence, we confirm the finding of the Ld. CIT in assuming the jurisdiction under Section 263 of the income tax act as well as giving directions to the assessing officer to reframe the assessment after considering the report of investigation wing.

24. In the result we reverse the finding of the Ld. CIT in assuming jurisdiction on the issue of allowability of warranty provisions to the assessee holding that the order is neither erroneous not prejudicial to the interest of revenue on that issue. However, on the issue of a liability of the expenditure of consultancy fees, we confirm the finding of the Ld. CIT in assuming the jurisdiction holding that as there was no enquiry made by the assessing officer with respect to this expenditure. The order of the Ld. AO was erroneous and prejudicial to the interest of the revenue and same was correctly directed to be revised."

4. In the light of the clear findings and conclusions recorded, we find no infirmity in the views expressed by the ITAT. We find that the

appeal fails to raise any substantial question of law. The same shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 13, 2024
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