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

\+ ITA 1488/2018

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 failure to make enquiry on allowability of deduction of provision for loss of Rs. 41.65 crore under Section 37(1) of the Act in case where the AO had made disallowance of the net loss as per profit and loss account could legally be held as erroneous and prejudicial to interest of revenue u/s 263 of the Act.
>
> 2.2 Whether the disclosure of claim of deduction of provision for loss to the profit and loss account which was accepted by the AO without making any enquiries could legally be held as erroneous and prejudicial to the interest of revenue u/s 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 that was taken by the CIT, the ITAT has held as follows:-

> "34. We have carefully considered the rival contentions and also perused the orders of the lower authorities. We also considered the various decisions cited before us by both the parties. The simple issue involved before us is that the assessee has put a note in the audited financial statement that it recognises revenue Rs. 32.83 crores to the extent of advances received from the customers in respect of cancelled on suspended contracts and in respect of the same, the appellant has debited the provision for loss on suspended contracts of Rs. 41.65 crores. For this transaction, the appellant has submitted the detailed documents regarding the cancellation of the contracts of the various parties supported by the letters and emails etc and details regarding creation of provision during the course of assessment proceedings. The assessee has also offered a corresponding revenue of Rs. 32.83 crores on that account. Therefore, the net debit to the profit and loss account is of Rs. 8.81 crores. This amount is already been disallowed by the Ld. assessing officer vide para No.7 of his assessment order. The Ld. assessing officer is specifically noted that keeping in view the principles laid down by the courts, it may be concluded that apparently the assessee company and made provision of such losses in excess of Rs. 8.81 crores (Rs. 41.65 crores -32.83 crores). These excess loss claimed over the amount of revenue recognized to the tune of Rs. 8.81 crores is held to be not allowable on simple consideration of the matching principles in accounting. Therefore according to us, the Ld. assessing officer has disallowed the amount of excess expenditure on the loss of suspended contracts after taking into the consideration the income already offered by the assessee. In the present case income offered by the assessee is Rs. 32.83 crores and the expenditure incurred by the assessee is Rs. 41.65 crores from the same transactions. Therefore, all the 2 transactions of credit to the profit and loss account of Rs.32.83 Crores and debit to the profit and loss account of Rs.41.65 crores both emanate from the same transactions and loss arising thereon has already been disallowed by the Ld. Assessing officer. In view of above facts we are of the opinion that the Ld. Assessee officer has applied the mind to the whole issue of loss on account of suspended contracts and therefore it cannot be said that Ld. assessing officer has not made the due enquiries before making the disallowance. Further more, the order

> of the Ld. CIT also does not show that how the unascertained income with respect to Rs. 32.83 crores is chargeable to tax as ascertained income, which is already accrued to the assessee when from the same transaction it is stated that the amount of Rs. 41.65 crores is an unascertained liability. There is a dichotomy in the order of the Ld. CIT. It is also not shown by the Ld. CIT that how the order of the Ld. assessing officer is erroneous. Further, Ld. CIT has failed to show that when the Ld. assessing officer has disallowed the complete expenditure/loss claimed by the assessee and which is pending before the Ld. CIT A, how the order is prejudicial to the interest of the revenue. In view of this we are of the opinion that the order passed by the Ld. assessing officer is neither erroneous not prejudicial to the interest of the revenue and therefore the jurisdiction assumed by the Ld. CIT in revising the order under section 263 of the income tax act is invalid. In view of this we quash order passed by the Ld. CIT under section 263 of the income tax act on 18/03/2015."

4. In light of the clear findings and conclusions recorded, namely that the order passed by the Assessing Officer cannot be viewed as prejudicial or erroneous, we find no infirmity in the view expressed by the ITAT.

5. 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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