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

+ **ITA 432/2024**

PRINCIPAL COMMISSIONER

OF INCOME TAX 1

.....Appellant

Through: Mr. Vipul Agrawal, SSC with
Mr. Gibran Naushad and Ms.
Sakashi Shirwal, JSCs.

versus

**M/S. ELENTEE INDIA PVT. LTD.(FORMERLY KNOWN
AS RIPE COMPONENTS**

TECHNOLOGIES PVT. LTD.)

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **06.09.2024**

CM APPL. 46205/2024 (60 days delay in filing the appeal) and

CM APPL. 46206/2024 (123 days delay in refilling the appeal)

Bearing in mind the disclosures made in the applications, the delay of 60 days in filing the appeal and 123 days in refilling the appeal is condoned.

Applications stand disposed of.

ITA 432/2024

1. The Principal Commissioner impugns the order of the **Income Tax Appellate Tribunal**¹ dated 30 May 2023 and has suggested the following questions of law for our consideration:-

“A) Whether on facts & the circumstances of the case and in law,

¹ Tribunal



the Hon'ble ITAT has erred in upholding the order of CIT(A) and dismissing the appeal of Revenue on issue of disallowance made by the AO amounting to Rs. 5,68,22,267/- on account of disallowance of 5% of material consumptions as being excess consumption of raw material?

B) Whether on facts & the circumstances of the case and in law, the Hon'ble ITAT has erred in upholding the order of CIT(A) and dismissing the appeal of Revenue on issue of disallowance made by the AO amounting to Rs. 94,28,002/- on account of foreign exchange fluctuation as being beyond financial year 2011-12?

C) Whether on facts & the circumstances of the case and in law, the Hon'ble ITAT has erred in upholding the order of CIT(A) and dismissing the appeal of Revenue on issue of disallowance made by the AO amounting to Rs. 18,11,088/- being 50% of Guest House Expenses of Rs. 36,22,176/-?

D) Whether on facts & the circumstances of the case and in law, the Hon'ble ITAT has erred in upholding the order of CIT(A) and dismissing the appeal of Revenue on issue of disallowance made by the AO amounting to Rs. 43,23,320/- being 25% of repair and maintenance expenses of Rs. 1,72,93,277/-?

E) Whether on facts & the circumstances of the case and in law, the Hon'ble ITAT has erred in upholding the order of CIT(A) and dismissing the appeal of Revenue on issue of disallowance made by the AO amounting to Rs. 23,29,368/- being 10% of Royalty of Rs. 2,32,93,678/-?

F) Whether on facts & the circumstances of the case and in law, the Hon'ble ITAT has erred in upholding the order of CIT(A) and dismissing the appeal of Revenue on issue of disallowance made by the AO amounting to Rs. 23,29,368/- being 10% of Royalty of Rs. 2,32,93,678, ignoring the fact that assessee had failed to produce any agreement regarding Royalty which have legal sanctity?

G) Whether on facts & the circumstances of the case and in law, the Hon'ble ITAT has erred in upholding the order of CIT(A) and dismissing the appeal of Revenue on issue of disallowance made by the AO amounting to Rs. 12,00,000/- on account of disallowance of job work expenses?

H) The appellant craves leave to add, alter or amend any Substantial Question of Law raised above at the time of hearing."

2. We, however, and on going through the order rendered by the Tribunal find that a detailed remand report was called for by the



Commissioner of Income Tax (Appeals)² and in which no adverse comment had been entered by the Assessing Officer insofar as the challenge to the additions were concerned. It is in the aforesaid backdrop that the Tribunal has ultimately affirmed the view taken by the CIT(A) in respect of all the additions which had been suggested.

3. This becomes evident from the following conclusions which have ultimately come to be recorded and rendered by the Tribunal:-

“12. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the addition made by AO on account of excess raw material consumption but deleted by CIT(A). We find that CIT(A) after considering the material before him, the remand report and other details furnished by assessee had given a finding that assessee had furnished the complete details of month wise sales and during the year under consideration the consumption of raw material to sales was 77.12%, whereas in the previous year 2011-12 and 2010-11 it was 78.04% and 77.67% respectively meaning thereby that the consumption of raw material in the year under consideration was on the lower side as compared to previous years. He further noted that the lower side as compared to previous years. He further noted that assessee was subject to VAT and Excise and both departments has accepted the financial result of the assessee. He therefore held that the AO was not justified in making addition by rejecting of books of accounts u/s 145(3) of the Act. CIT(A) has noted that in the remand proceedings, no adverse comments were offered by AO. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue. In such a situation, we find no reason to interfere with the order of CIT(A) on this issue and **thus the ground of Revenue is dismissed.**”

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19. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the disallowance of foreign exchange loss made by AO but deleted by CIT(A). CIT(A) while deciding the issue has given a categorical finding that with respect to the loss of Rs.94,28,002/- it was on account of capital goods and the assessee had made the adjustment to the cost of assets and had not claimed any expense on account of foreign exchange fluctuation on capital goods. We further find that CIT(A) has noted that in the remand report, AO

² CIT(A)



has not given any adverse finding on the submissions made by the assessee. We therefore find force in the conclusion of CIT(A) that since assessee has not claimed any expenses the disallowance by AO was not sustainable. Before us, Revenue has not pointed to any fallacy in the findings of CIT(A) and **thus the ground of Revenue is dismissed.**

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25. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the adhoc disallowance of guest house expenses that was made by AO but partly deleted by CIT(A). CIT(A) while granting partial relief to the assessee has noted that in the remand report that was called from AO, AO has noted that no supporting evidences were furnished by assessee and assessee had furnished only rent agreement. CIT(A) after considering the factual position held that the disallowance made at 50% by AO to be on higher side and restricted the disallowance to 20% thereby confirming the addition to the extent of Rs.7,24,435/-. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue nor is the assessee aggrieved by partial relief granted by CIT(A). In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

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31. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the disallowance of repair and maintenance expenses made by AO but deleted by CIT(A). We find that CIT(A) while deleting the addition has given a finding that AO has made the disallowance without pointing out any defects in the books of accounts of the assessee and that the expenses were incurred for the purpose of business and allowable u/s 37(1) of the Act. He therefore deleted the addition made by AO. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue. In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

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37. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the disallowance of royalty expenses made by AO but deleted by CIT(A). CIT(A) while deleting the addition has noted that AO had allowed royalty expenditure to 90% and disallowed 10%. He noted that the royalty payment made by assessee was not found to be bogus and since the assessee had furnished necessary evidence for



making royalty payment, the adhoc disallowance could not be made. He thus deleted the addition made by AO. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue. In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.**

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43. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the disallowance of Jobwork charges made on adhoc basis by AO but deleted by CIT(A). We find that CIT(A) after considering the details and remand report furnished by assessee has given a finding that during the course of remand proceedings, AO had verified the details of expenses that were filed by assessee and he has accepted the payments made and had also given a finding that assessee had deducted TDS on contractual payment. Considering the totality of the facts, CIT(A) directed that the addition be deleted. Before us, no fallacy in the findings of CIT(A) has been pointed out by Revenue. In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the ground of Revenue is dismissed.”**

4. In view of the aforesaid, we find that the appeal does not raise any substantial question of law. The appeal consequently stands dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 6, 2024 /vp