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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 571/2024**
THE COMMISSIONER OF INCOME
TAX - INTERNATIONAL TAXATION -3

.....Appellant

Through: Mr Ruchir Bhatia, SSC, Mr Anant Mann, JSC and Mr Abhishek Anand, Advocate.

versus

VETCO GRAY PTE LTD.

.....Respondent

Through: Mr Sachit Jolly, Sr Advocate with Mr Abhyudaya Shankar Bajpai and Ms Disha Jham, Advocates.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

ORDER
12.12.2024

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1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) impugning an order dated 15.05.2024 (hereafter *the impugned order*) passed by the learned Income Tax Appellate Tribunal (hereafter *the ITAT*) in ITA No.2537/Del/2023 in respect of the assessment year (AY) 2017-18 captioned *Assistant Commissioner of Income Tax v. Vetco Gray Pte. Ltd.*

2. The Revenue had preferred the above appeal (ITA No.2537/Del/2023) impugning an order dated 12.06.2023 passed by the Commissioner of Income Tax (Appeal-43) [hereafter *the CIT(A)*] whereby an appeal preferred by the respondent (hereafter *the Assessee*) in respect of the order dated 27.06.2022 passed by the Assessing Officer (AO), was allowed.



3. The controversy essentially relates to an order passed under Section 263 of the Act in respect of AY 2017-18.
4. The Assessee had filed its return of income for the AY 2017-18 on 31.07.2017, which was taken up for scrutiny. The assessment proceedings culminated in an order dated 17.02.2020 passed under Section 143(3) read with Section 144C (3) of the Act whereby the part of the receipts of the Assessee from off shore supplies were construed as attributable to the Assessee's permanent establishment (PE) in India and were charged to tax under the Act. The Assessee did not object or appeal the said assessment order, however, the learned Commissioner of Income Tax [CIT] held the said assessment order to be erroneous and prejudicial to the Revenue. The learned CIT passed an order dated 24.03.2022 under Section 263 of the Act, attributing 25% of the income to the Assessee's PE.
5. The Assessee successfully challenged the order dated 24.03.2022 before the learned ITAT in ITA No.733/Del/2022. And, by an order dated 20.12.2022, the learned ITAT set aside the CIT's order dated 24.03.2022, passed under Section 263 of the Act.
6. This court is informed that the Revenue challenged the learned ITAT's order dated 20.12.2022 before this court under Section 260A of the Act, being ITA No. 448/2023. However, the said appeal was dismissed.
7. Notwithstanding that the Assessee had succeeded in its challenge to the order dated 24.03.2022, the AO passed a separate order dated 27.06.2022 under Section 263 read with Section 143(3) of the Act to give effect to the learned CIT's order dated 24.03.2022.
8. Obviously, the said order cannot sustain because the order dated 24.03.2022 passed under Section 263 of the Act had been set aside.



9. The Revenue has projected the following questions of law for consideration of this court:-

“1. Whether on the facts and in the circumstances of the case, the Id. ITAT has erred in setting aside the order under section 263 by holding that the assessment order sought to be revised is not erroneous as the A8 has taken the same view as taken by his predecessor in the preceding assessment years on the issue of taxability of offshore supply @1% interest of @10% u/s 44BB of the Act and therefore holding that CIT’s revisionary order is a change of opinion by ignoring the fact that there could not have an opinion at the first place in the absence of material relevant fact gathered, inquired and investigated?

2. Whether on the facts and in the circumstances of the case, the Id. ITAT has erred in not appreciating the legal position that income from lease rental received by the Assessee is taxable under section 44DA of the Act instead of 44BB of the Act being in the nature of royalty income and therefore, factual infirmity in the form of a typological error with regard to payer cannot be a ground to quash the order under section 263 of the Act?

3. Whether on the facts and in the circumstances of the case, the Id. ITAT has erred in appreciating the fact that the order passed in the instant case under section 143(3) of the Act is in contrary to legal provisions and settled legal position and therefore, such an order can be revised under section 263 of the Act in view of the Hon’ble Supreme Court in Tara Devi Aggarwal Vs. CIT 88 ITR 323 (SC), which held that an order is erroneous if it is based on an incorrect fact or an incorrect application of law or non-application of mind or based on no or



insignificant material?”

10. It is apparent from the facts as narrated above that none of the questions as projected by the Revenue arise in the present appeal. The decision of the learned ITAT is not based on the merits of the order passed under Section 263 of the Act as that was the subject matter of another appeal [ITA No.733/Del/2022 captioned *Vetco Gray Pte. Limited v. CIT (International Taxation), New Delhi*]. The impugned order is premised solely on the ground that the AO has passed an order, essentially, to give effect to the order passed under Section 263 of the Act, which had been set aside.

11. Clearly, no substantial questions of law arise in the present appeal. The same is, accordingly, dismissed.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

DECEMBER 12, 2024

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Click here to check corrigendum, if any