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

\+ ITA 829/2017

SADHANA PHOSPHATES & CHEMICAL LIMITED.
..... Appellant

Through: Mr. Salil Kapoor, Ms. Ananya Kapoor, Mr. Shivam Yadav and Mr. Sumit Lalchandani, Advs.

versus

PR. COMMISSIONER OF INCOME TAX-8, & ANR.
..... Respondent

Through: Mr. Sanjeev Menon, Jr.SC for Mr. Zoheb Hossain, Sr.SC.

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

O R D E R

% **22.03.2024**

1. The assessee seeks to impugn the judgment rendered by the Income Tax Appellate Tribunal ["**ITAT**"] dated 11 May 2017 and has proposed the following questions of law for our consideration:

> "A. Whether in view of the facts and circumstances of the case and in law, the Tribunal is right in upholding the addition made by the AO on account of alleged Over-invoicing and Bogus Expenses u/s 69C of the Income Tax Act and consequently, disallowing the Depreciation on Plant and Machinery.
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> B. Whether in view of the facts and circumstances of the case and in law, the Tribunal has erred in relying upon one statement of Mr. Ravi Chandran, Proprietor of M/s M.R. Consultants recorded during the Survey dated 21.01.2000 and didn't consider his second statement dated 25.05.2010 recorded during Remand Proceedings

which clarified the facts and circumstances of the first statement recorded by the Income Tax Authorities and denied issuing any bogus invoices.

C. Whether in view of the facts and circumstances of the case and in law, the Tribunal is right in upholding the addition of Rs. 61,42,000/- on account of Over-invoicing and Bogus Expenses u/s 69C of the Income Tax Act on the ground that the Assessee has failed to cooperate and penalty u/s 271(l)(b) of the Income Tax Act has been imposed on the Assessee Appellant, whereas no such Penalty has been levied and the Assessment Order was passed without giving proper opportunity to the Appellant.

D. Whether in view of the facts and circumstances of the case and in law, the Tribunal is right in confirming the addition u/s 69C of the Income Tax Act without considering the material and evidences placed on record and the statements recorded by the Income Tax Authorities of various persons during the remand proceedings.

E. Whether in view of the facts and circumstances of the case and in law, the Tribunal is right in confirming the addition u/s 69C of the Income Tax Act when admittedly no reasonable opportunity was provided by the AO and the Second Assessment Order was passed in a hurried and cryptic manner.

F. Whether in view of the facts and circumstances of the case and in law, the Tribunal is right in confirming the addition u/s 69C of the Income Tax Act when the additions made on account of the other two issues have been restored back to the file of the AO on the ground that necessary verification was not done by the AO and this fact is ignored by the Tribunal while upholding the said issue.

G. Whether in view of the facts and circumstances of the case and in law, the impugned order by the Tribunal is bad in law and perverse as the documents and evidences placed on record were ignored by it."

2. We note that the dispute itself emanates from Section 69C of the Income Tax Act, 1961 and the various additions that were made in the course of assessment. We note that the matter had travelled back to the ITAT post a remand on an earlier occasion. While dealing with the concurrent findings of fact which came to be returned by the Assessing Officer as well as the Commissioner of Income Tax

(Appeals), the ITAT insofar as the additions are concerned, has observed as follows:

> "9. We have perused submissions advanced by both sides in the light of records placed before us.
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> 10. It is observed that witnesses examined by assessing officer during assessment proceedings retracted their statements during remand proceedings. However, from the survey report prepared by investigating wing reveals that cash has been transferred from head office to Udaipur. It is difficult to agree that it was merely for running day-to-day affairs of company and to avoid any delay in reaching money to Udaipur that the cash was withdrawn and sent. There is a categorical finding of Ld. CIT(A) which reads as under:
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>> "22. With regard to the balance, after considering all the above evidences, the survey report, the submissions of the appellant, the two remand reports of the AO and the statements of the concerned persons, I am of the considered view that in spite the fact that there is a retraction of the statements by the above mentioned persons, the same cannot be entirely accepted at their face value. Any reasonable person going through the records of the appellant's case, notwithstanding the explanation of transfer of money from Delhi to Udaipur, would reasonably come to the conclusion that over invoicing and inflation of expenses to some extent was definitely being carried on by the appellant company. There are some specific instances cited at page 4 of the DDIT (Inv.)'s report where figures of amounts of cheques issued have been mentioned alongwith the figures of the cash received back. In one instance, cheque was issued for Rs. 31,20,000/- and cash of Rs.29,80,000/- was received showing a difference of Rs.1,40,000/-. In another instance cheque of Rs. 21,05,501/- were issued and cash of Rs. 16,80,760/- was received back showing a difference of Rs. 4,24,751/-. From the survey report it is also seen that certain other papers were also found during the course of survey which point toward inflation of expenses and purchases. Hence, no reasonable person can conclude under these circumstances that the appellant is entirely correct when it is asserted that there was no over invoicing or inflation of bills.
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>> Keeping in view the facts and circumstances of the case including the statements of the witnesses and the remand report of the AO, the addition made by the AO amounting to Rs. 61,42,000/- (after reducing Rs.8 lacs deleted as above) is upheld to the extent of Rs. 12,50,000/-

and the balance is deleted. The appellant gets relief of Rs.48.92 lacs.

11. We agree with above findings of Ld. CIT(A). Further, it is very hard to believe that assessee would incur such huge amount of admin/office expenses at Udaipur, as has been advocated by Ld. Counsel. Assessee has not established by way of any evidence to prove what was the kind/nature of expenses that it had incurred with these monies that has have been transferred from Delhi to Udaipur.

In our view, requirement under section 69C of the Act has not been fulfilled by assessee at all. It is observed that Ld. CIT(A) has sustained addition to an extent of Rs. 12,50,000/- regardless the report of DDIT Investigation without any basis. Assessee has also not been able to prove that it is not a case of over invoicing and inflation of expenses. Ld. CIT(A) records that cheques were issued for Rs. 31,20,000/- and cash of Rs. 29,80,000/- was received showing differences of Rs. 1,40,000/- similar instances were reported by Director Investigation wing. On perusal of statements recorded by Sh. Ravi Chandran, proprietor of M/s M.R Consultants and Engineers shows that bogus expenses relating to other parties have been invoiced by assessee.

12. It is observed that assessing officer has initiated proceedings under section 274 read with section 271 of the Act for non-compliance of notices under section 143(2) for which penalty also has been levied under section 271(l)(b) of the Act. We do not see any reason to set aside this issue to Ld. AO again for any further verification as it would not serve any purpose. Assessee has failed to cooperate twice with assessing officer in the past.

13. We are convinced with findings of Ld. AO regarding expenditure that has not been explained by assessee as required under section 69C of the Act. Invoices raised by assessee for an amount of Rs.61,42,000/-, during the year under consideration, the same deserves to be added as income in the hands of assessee as unexplained. Accordingly, we allow ground No. 4, raised by Revenue and dismiss ground No. 2 & 3 raised by Assessee."

3. Even though there may have been certain discrepancies in the manner in which the statements recorded were treated, we find that they would clearly have no impact, on the conclusions which were ultimately rendered.

4. We consequently find that the appeal raises no substantial

question of law. It shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 22, 2024/p