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

\+ ITA 213/2023

HAVELLS INDIA LIMITED .....Appellant

Through: Appearance not given.

versus

DEPUTY COMMISSIONER OF INCOME TAX CENTRAL CIRCLE 17 NEW DELHI .....Respondent

Through: Mr. Debesh Panda, SSC with Ms. Zehra Khan & Mr. Vikramaditya Singh, JSCs.

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\+ ITA 120/2024

HAVELLS INDIA LIMITED .....Appellant

Through: Appearance not given.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE -1 LTU NEW DELHI .....Respondent

Through: Mr. Vipul Agrawal, SSC.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

O R D E R

% **19.02.2025**

1. We take note of the challenge which stands raised by the assessee to the judgment of the **Income Tax Appellate Tribunal**[1] and in terms of which the following two questions are posed for our consideration:-

[1] Tribunal

(a) "Whether the Hon'ble ITAT has erred in law by holding the transaction in the instant matter as an International transaction u/s 92B in contravention of the provisions of the IT Act?"

(b) Whether the explanation added to section 92B of the IT Act, vide the Finance Act, 2012, w.r.e.f. 01.04.2002, incorporating the term "guarantee" will have retrospective effect?"

2. We find that insofar as Question 'a' is concerned, the same stands conclusively answered against the appellant by the Court in terms of its judgment handed down in **M/s Dabur India Limited v. Pr. Commissioner of Income Tax – III**[2] and which we had followed while dismissing **Havells India Ltd. vs. Commissioner of Income Tax**[3].

3. That only leaves us to examine question 'b'. We find that the Tribunal has in this respect essentially followed the view that was taken by the Madras High Court in **Commissioner of Income Tax v. Redington (India) Ltd.**[4] and where the Explanation which came to be inserted in Section 92B of the Income Tax Act,1961 by Finance Act, 2012 was construed in the following manner:-

> "**71.** A new enactment or an amendment meant to explain the earlier Act has to be considered retrospective. The Explanation inserted in s. 92B by Finance Act, 2012 w.r.e.f. 1st April, 2002 commences with the sentence "For the removal of doubts, it is hereby clarified that-"
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> **72.** An amendment made with the object of removal of doubts and to clarify, undoubtedly has to be read to be retrospective and Courts are bound to give effect to such retrospective legislation.
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> **73.** The learned senior standing counsel for the Revenue referred to the decision in *Co-operative Company Ltd.* v. *Commr. of Trade Tax*, in Civil Appeal No. 2124 of 2007 dt. 24th April, 2007, wherein it was held that when an amendment is brought into force from a particular date, no Retrospective operation thereof can be

[2] ITA 513/2024 decided on 08 October 2024
[3] ITA 387/2022 decided on 19 February 2025
[4] 2020 SCC OnLine Mad 28276

contemplated prior thereto. The explanation in s. 92B specifically has been given retrospective effect and it is clarificatory in nature and for the purpose of removal of doubts. This issue was considered by this Court in the case of *Sudexo Food Solutions India (P) Ltd.* (supra).

74. The concept of bank guarantees and corporate guarantees was explained in the decision of the Hyderabad Tribunal in the case of *Prolifics Corporation Ltd.* (supra). In the said case, the Revenue contended that the transaction of providing corporate guarantee is covered by the definition of international transaction after retrospective amendment made by Finance Act, 2012. The assessee argued that the Corporate Guarantee is an additional guarantee, provided by the parent company. It does not involve any cost of risk to the shareholders. Further, the retrospective amendment of s. 92B does not enlarge the scope of the term "international transaction" to include the Corporate Guarantee in the nature provided by the assessee therein. The Tribunal held that in case of default, guarantor has to fulfil the liability and therefore, there is always an inherent risk in providing guarantees and that may be a reason that finance provider insist on non-charging any commission from AE as a commercial principle. Further, it has been observed that this position indicates that provision of guarantee always involves risk and there is a service provided to the AE in increasing its creditworthiness in obtaining loans in the market, be from financial institutions or from others. There may not be immediate charge on P&L a/c, but inherent risk cannot be ruled out in providing guarantees. Ultimately, the Tribunal upheld the adjustments made on guarantee commissions both on the guarantees provided by the bank directly and also on the guarantee provided to the erstwhile shareholders for assuring the payment of AE.

75. In the light of the above decisions, we hold that the Tribunal committed an error in deleting the additions made against corporate and bank guarantee and restore the order passed by the DRP."

4. We find no justification to entertain the appeal on the question as proposed bearing in mind the indisputable position of Finance Act, 2012 having introduced those amendments with retrospective effect from 01 April 2002. We are thus in these appeals not concerned with the introduction of an Explanation without or absent an express stipulation of retroactivity accorded by the Legislature.

5. We, consequently, find that Question 'b' raises no substantial

issue. The appeals fail and shall stand dismissed.

YASHWANT VARMA, J.

HARISH VAIDYANATHAN SHANKAR, J.

FEBRUARY 19, 2025/v