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

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Date of Decision: 03.09.2025+ **ITA 303/2025**

PR. COMMISSIONER OF INCOME TAX, NOIDAAppellant

Through: Mr. Puneet Rai, SSC, Mr. Ashvini
Kr., Mr. Rishabh Nangia, Mr. Gibran,
JSC.

versus

TRIVENI ENGINEERING AND INDUSTRIES LTDRespondent

Through: Mr. Rohit Jain, Mr. Saksham Singhal,
Advs.**CORAM:****HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MR. JUSTICE VINOD KUMAR****V. KAMESWAR RAO, J. (ORAL)****CM APPL. 49997/2025(condonation of delay)**

1. For the reasons stated in the application, the delay of 15 days in filing this appeal is condoned.
2. The application is disposed of.

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3. This appeal under Section 260A of the Income Tax Act, 1961 (the Act) lays a challenge to an order dated 29.01.2025 passed by the Income Tax Appellate Tribunal (ITAT) whereby it decided 12 ITAs relating to Assessment Years (AY) 2007-08 to 2011-12.



4. The three proposed substantial questions of law in the appeal are reproduced as under:

- “ i. Whether on the facts and circumstances of the case, the Ld. ITAT has erred in remanding the issue of taxability of subsidy and remission of statutory dues of Rs.110,90,94,770/- to the Assessing Officer and directing the AO to decide the issue on the basis of outcome of the order of Hon’ ble Supreme Court pending against decision of Hon’ ble Allahabad High Court in W.P. (C) No.2679/2008 ?*
- ii. Whether on the facts and circumstances of the case, the Ld. ITAT has failed to decide the issue of taxability of subsidy and remission of statutory dues on the incorrect premise that the said issue is pending before Hon’ ble Supreme Court?*
- iii. Whether on the facts and circumstances of the case, the Ld. ITAT has erred in deleting the entire additions of Rs.6,89,80,258 /- on the issue of after sales expenses, wherein the assessee company themselves admit that the after sales expenses incurred during the year are only Rs.1,76,30,000/?”*

5. Mr. Puneet Rai, learned Senior Standing Counsel for the appellant submits that the substantial question numbers (i) & (ii) are interconnected. The same relate to the action of the CIT (Appeals) partially reversing the Assessing Officer’s (AO) finding, which rejected the assessee’s subsidy claim of Rs. 1,10,90,94,770/- to the extent of Rs.1,04,70,00,000/- which left the tax payer as well as the department aggrieved. On question numbers (i) & (ii), the ITAT in paragraphs 4 to 8 of the impugned order stated as under:

“4. It is in this factual backdrop that both parties are indeed ad-idem during the course of hearing that the first and foremost common issue raised in the instant appeal is that of correctness of the CIT(A)’s action partly reversing the Assessing Officer’s finding rejecting the assessee’s subsidy claim of Rs. 1,10,90,94,770/-; to the extent of Rs. 1,04,70,00,000/-; which leaves the taxpayer as well as the department aggrieved.



5. Learned counsel reiterates the assessee's stand all along that the above subsidy/ incentives receivable under the sugar industrial promotion policy, 2004 is in the nature of a capital receipt going by the "purpose test" in light of *Sahney Steel and Press Works Ltd. & Others v. CIT* (1997) 228 ITR 253 (SC); *CIT v. Pony Sugar & Chemicals Ltd.* (2008) 306 ITR 392 (SC); & *CIT v. Chaphalkar Brothers* (2018) 400 ITR 279 (SC).

6. Learned CIT(DR) on the other hand, strongly supports, the assessment findings that the impugned subsidy in fact deserves to be treated as, a revenue receipt on "accrual" basis and, therefore, we ought to revive the entire addition of Rs.1,10,90,94,770/-.

7. Faced with this situation, learned counsel takes us to the assessment discussion in para 4 page 1 onwards dated 31.12.2009 to buttress the point that the state government herein had revoked the sugar incentive promotion policy itself w.e.f. 4.6.2007. And that this very issue had arisen between all the similarly situated industrial undertakings against the State of Uttar Pradesh in the main writ petition WP(C) no. 2679 of 2008 (pages 299 to 334), which stood allowed by the hon'ble jurisdictional high court of judicature at Allahabad on 12.02.2019. And that hon'ble supreme court's interim order(s) dated 1.7.2019 and 9.7.2021 (pages 372-377) in the Special Leave Petition(s) "SLPs" preferred by the State of Uttar Pradesh & others, has stayed the operation thereof and the matter is yet to be taken up thereafter for final adjudication as informed to us by both the parties.

8. That being the case and despite the assessee having argued in favour of the "purpose" test (*supra*), we are of the considered view that since the issue herein is very much pending before their lordships for final adjudication, it would indeed be premature for us to apply "accrual" principle at this stage for lack of any reasonable certainty in recognition of revenue as per *Chainrup Sampatram v. CIT* (1953) 24 ITR 481 (SC). Their lordships have categorically held that a revenue



receipt could be recognized as an income only in case there arise a reasonable certainty thereof. We reiterate that the Revenue's clear cut case is that the same has indeed been not actually received all along as the dispute is pending before hon'ble apex court. We, accordingly are of the considered view that the instant common first and foremost issue between the parties is required to be re-adjudicated by the learned Assessing Officer after it is decided in the hon'ble supreme court so as to avoid multiplicity of proceedings. We order accordingly. It is made clear tht the assessee indeed be at liberty to raise all legal and factual pleas in consequential proceedings.

This assessee's instant substantive ground nos. 1 to 1.3 and Revenue's corresponding first substantive ground herein are hereby accepted for statistical purposes in very terms."

6. The only submission made by Mr. Rai is that, the ITAT instead of remanding the matter back to the AO should have decided the issue.
7. He do concede that the observation made by the ITAT on the issue with regard to the ***Sugar Industrial Promotion Policy, 2004***, which has been decided by the High Court of Judicature at Allahabad is pending consideration before the Supreme Court and the matter need to be finally adjudicated. Until the adjudication is complete, the AO cannot decide the issue which arises for consideration for which the matter has been remanded back by the ITAT.
8. Mr. Rohit Jain, learned counsel for the respondent acknowledges the submission of Mr. Rai. He states that, as and when the Supreme Court decides the appeal, the decision shall be informed to the AO for him to proceed with the adjudication process in terms of the remand.
9. We say that, since the ITAT has remanded the matter back to the AO



and in any case such adjudication shall depend upon the outcome of the SLP, the plea that the ITAT should have decided the issue, does not merit consideration.

10. In so far as, the substantial question of law (iii) is concerned, Mr. Rai has drawn our attention to the conclusion drawn by the AO, in paragraph 6 of the Assessment Order dated 31.12.2009, in the following manner:

“6) After Sales Expenses & Others of Rs. 6.89,80.258/-

*Assessee has claimed After Sales Expenses of Rs. 6,89,80,258/-.
In response to query, assessee submitted his reply that:*

“These expenses are on account of amounts provided for short supplies against orders executed and billed to the client in full. However, since the entire performance of the order was not completed, expenses for the material short delivered and costs In connection with the services yet to be provided have been accounted for.”

6.1 Based on the above facts, it is evident that these expenses claimed by the assessee are not actual expenses but are in the nature of "provision for expenses".

6.2 Before coming to the contention of the assessee, definition of “provision” is to be understood:-

6.3 A provision is an amount set aside out of profits and other surpluses provided for diminution in the value of assets or any known liability of which the amount cannot be determined with substantial accuracy.

According to clause 7(1)(a) of part III of schedule VI to the Companies Act, 1956, “provision”



means 6 any amount written off or retained by way of providing for depreciation, renewals or diminution in value of assets, or retained by way of providing for any known liability of which the amount cannot be determined with substantial accuracy.”

Any amount set-aside to provide for any known liability of which the amount cannot be determined with substantial accuracy is a provision;

6.4 From the above definition, it is evident that in case of a provision, it is not possible to predict any certainty as to when and to what extent a liability would materialize resulting in business expenditure. As per Section 37(1) of the income Tax Act only those expenses which have been incurred wholly and exclusively for the purpose of business are allowed as deduction. In the instant case, setting aside Rs. 6,89,80,258/- is just a provision for liability which has not matured, therefore, the same cannot be treated as an expense which have been incurred wholly and exclusively for the purpose of business.

6.5 It is pertinent to mention here that Hon’ble Supreme Court in the case of Bharat Earthmovers ltd. Vs, CIT (2000) held that “if a business liability has definitely arisen in the accounting year, the deduction should be allowed although the liability may have to be qualified and discharged at a future date but in case of assessee, there is no definite element to the liability that assessee has claimed to be a definite liability. Hence, a sum of Rs, 6,89,80,258/- is disallowed by invoking the provisions of Section 37(1) of the*



Act, Since I am satisfied that the assessee has furnished inaccurate particulars, penalty u/s 271(1)(C) is being initiated separately.

(Addition : Rs. 6,89,80,258/-)”

11. In the appeal filed by the respondent, the CIT (Appeals) vide its order dated 27.01.2016 has in paragraph 14, held that:

“14. The Id. A.O. disallowed an amount of Rs .6,89,80,258/- treating the same as provision and not the liability having actually accrued, The appellant in its grounds at para 6.1 on page 14 of its paper book filed with appeal memo has admitted that out of the expenditure of Rs. 6.89 crores an amount of Rs. 5.1350 Crores only was provision and the balance of Rs.1.7630 Crores was actual expense. The ground taken by the appellant In its appeal memo settles the dispute. The disallowance to the extent Rs. 5.1350 Crores is therefore confirmed being the provision and for which the liability has not yet arisen. The amount for Rs. 1.7630 Crores which admittedly represented actual expenses is allowed and addition to that extend is deleted. The appellant gets relief to the extent of Rs. 1.7630 Crores out of the disallowance of Rs. 6,89,80,258/-.”

12. Both the parties herein, filed appeals before the ITAT to the extent they were aggrieved by the conclusion drawn by the CIT (Appeals).

13. We find that the ITAT in the impugned order while rejecting the appeal of the Revenue and allowing the appeal of the respondent herein, has in paragraphs 9 to 14, held that:

“9. Next comes the assessee’s and Revenue’s respective second substantive ground that the learned CIT(A) has erred in law and on facts in restricting the Assessing Officer’s action disallowing after sales expenses etc. from Rs. 6,89,80,258/- made in the course of assessment to Rs. 5,13,56,000/-, in the lower appellate discussion, reading as under:

“14. The Id. A.O. disallowed an amount of Rs.6,89,80,258/-



treating the same as provision and not the liability having actually accrued. The appellant in its grounds at para 6.1 on page 14 of its paper book filed with appeal memo has admitted that out of the expenditure of Rs. 6.89 crores an amount of Rs. 5.1350 Crores only was provision and the balance of Rs.1.7630 Crores was actual expense. The ground taken by the appellant in its appeal memo settles the dispute. The disallowance to the extent Rs. 5.1350 Crores is therefore confirmed being the provision and for which the liability has not yet arisen. The amount for Rs. 1.7630 Crores which admittedly represented actual expenses is allowed and addition to that extend is deleted. The appellant gets relief to the extent of Rs. 1.7630 Crores out of the disallowance of Rs. 6,89,80,258/-.”

11. It has come on record that the learned CIT(A) had simply gone by the assessee’s provision to reject its claim on the one hand and deleted the balance portion on account of actual expenditure in it’s favour. We are of the considered view that the Revenue’s second substantive ground herein, seeking to revive the impugned actual expenditure, hardly carries any merits as this is not even its case that the same has not been expended wholly and exclusively for the purpose of business u/s 37(1) of the Act. Its second substantive ground raised herein fails therefore.

*12. We now advert to the assessee’s instant grievance seeking to allow the impugned provision wherein case law *Bharat Earth Movers v. CIT* (2000) 245 ITR 428 (SC); *Calcutta Company Ltd. v. CIT* (1959) 37 ITR 1 (SC); & *CIT v. Triveni Engineering & Industries Ltd.* (2011) 336 ITR 374 (Delhi) i.e. the assessee itself, in paras 6,7,8 & 11 has held that such a provision based on scientific computation formula could indeed be allowed.*

13. Learned counsel further reiterates the assessee’s stand that it has all along been recognizing the revenue from all projects subject to the corresponding expenditure provision which has to be incurred in future.

14. We find merit in the assessee’s arguments as the learned



CIT(A) has simply brushed aside its impugned provision for after sales expenditure etc. by observing, “The ground taken by the appellant in its appeal memo settles the issue”. Meaning thereby that the assessee’s scientific computation herein has nowhere been specifically dealt with or rejected as the learned lower authorities have declined its provision of the impugned expenditure raised for meeting future anticipated liabilities as per Bharat Earth Movers (supra). Coupled with this, the assessee has already succeeded on the very issue before hon’ble jurisdiction high court hereinabove. We, thus see no substance in the Revenue’s vehement contentions supporting the impugned disallowance, which stands deleted therefore.

This assessee’s second substantive ground succeeds in very terms therefore. Necessary computation shall follow as per law.”

14. Suffice to state that, on this issue, the ITAT has based its conclusion in respect of a judgment rendered by this Court in the case of ***CIT v. Triveni Engineering & Industrial Ltd. (2011) 336 ITR Delhi 374***, in respect of the assessee itself, wherein paragraph 11 reads as under:

“11. After considering the submissions, the counsel on the either side, in the given facts, we are of the prima facie view that arguments of the learned counsel for the assessee to prevail. The learned counsel for the Revenue may be correct in stating the proposition of law, generally. No doubt, unless the expenditure is actually incurred or it is accrued in the relevant year, it would not be allowed as deduction. Such a liability has to be in praesenti. However at the same time, in the given scenario where in relation to the project works undertaken by the assessee, completed contract method of accounting is followed, which is consistent with the Accounting Standards and these accounting standards also lay down the norms indicating the particular point of time when the provisions for all known liabilities and losses has to be made, the making of such a provision by the assessee appears to be justified moreso when the assessee had recognized gain as well on such project during this year itself. This appears to be in consonance with



principle of matching cost and revenue as well. However, in the projected scenario of this case after taking stock of the entire situation, we are of the opinion that it is not necessary to conclusively answer the aforesaid questions formulated. It is because of the reason that we find that the entire exercise is revenue neutral. It may be pointed out that it is a matter of record that against the provision of `139 lacs, the assessee had to actually incur expenditure of `218.03 lacs, i.e., more than the provision made. It is undisputed that the expenditure incurred by the assessee on the project is admissible deduction. The only dispute that the Revenue seeks to raise is regarding the year of allowability of expenditure. Considering that the assessee is a company assessed at uniform rate of tax, the entire exercise of seeking to disturb the year of allowability of expenditure is, in any case, revenue neutral.”

15. We have been informed by Mr. Jain that the judgment has attained finality in as much as the Revenue has not taken the same in appeal. The ITAT has given the benefit of the judgment.

16. We are of the view that no substantial question of law arises for consideration and the appeal is rejected but by taking the submission of Mr. Jain as noted in Paragraph 8 on record.

V. KAMESWAR RAO, J

VINOD KUMAR, J

SEPTEMBER 03, 2025

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