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

+ ITA 466/2010, 467/2010, 470/2010 and 472/2010

CENTRAL WAREHOUSING CORPN Appellant
Through Mr. M.S. Syali, Sr. Adv. with
Ms. Husnal Syali, Adv.

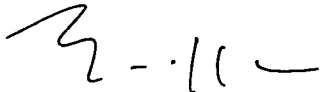
versus


ACIT Respondent
Through Mr. Kamal Sawhney, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V.EASWAR

% **ORDER**
20.01.2012

In view of the order passed by us in ITA 474/2010 titled Central Warehousing Corporation vs. ACIT, the present appeals are dismissed.


SANJIV KHANNA, J.


R.V. EASWAR, J.

JANUARY 20, 2012
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+ ITA 474/2010

CENTRAL WAREHOUSING CORPN Appellant
Through Mr. M.S. Syali, Sr. Adv. with
Ms. Husnal Syali, Adv.

versus

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ORDER
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1. This appeal by Central Warehousing Corporation relates to assessment year 1989-90 and arises out of the order of the Income Tax Appellate Tribunal (for short, 'the Tribunal') dated 31st March, 2008 passed in ITA No. 2859/D/03.

2. As separate issues have been raised, it will be appropriate to consider each issue and examine the same.

3. Issue No.1

“A: Whether on a true and correct interpretation of Section 10(29) of the Act, the Tribunal was right in law in reading the Warehousing Corporation Act, 1962 as an incorporated



legislation in section 10(29) and in principle restricts exclusion there under to income from letting of godowns/warehouses on items notified thereunder?"

4. The aforesaid question is of academic interest and it is not required to be answered in view of the factual matrix and findings recorded by the tribunal.

In the impugned order, the tribunal has held that warehousing income in respect of commodities specified in the notification issued under Section 11(b) of the Warehousing Corporation Act, 1962 qualifies for exemption under Section 10(29) of the Income Tax Act, 1961 ('Act', for short). Income from warehousing of commodities not specified in the notification issued under Section 11(b) of the Warehousing Corporation Act, 1962 is not exempted under Section 10(29) of the Act.

In the assessment year in question, it is stated that the appellant had warehoused commodities duly notified under Section 11(b) of the Warehousing Corporation Act, 1962. In view of the aforesaid factual position, this question need not be answered by us. We leave this question open. It will be open to the appellant assessee to challenge the interpretation in an appropriate case, if required.

5. Issue Nos.2 and 3

"B: Whether on a true and correct interpretation of Section 10(29) of the Act, exemption of Rs.87,17,09,062/- claimed in the return and allowed in the first instance is not in accordance with law?"

"E: Whether the tribunal had any material before it to conclude that the appellant is carrying separate and distinct business even though it has been consistently treated as one



business?”

6. On these two aspects, the matter has been set aside and remitted to the Assessing Officer for a fresh decision. We are not inclined to entertain the present appeal on these two issues. It may be noted that in respect of the second issue, the Assessing Officer has been specifically asked to decide and examine whether the assessee was carrying on separate and distinct businesses or it was carrying on only one business. This requires factual details and only thereafter there can be any analysis.

7. Issue Nos.4

“C: Whether the exclusion of income under section 10(29) mandates a determination of income i.e. reduction of expenses at the stage of determination of exclusion itself?”

8. The contention of the appellant/assessee is that deduction/exclusion under Section 10(29) of the Act, is in respect of gross income, and therefore, no expenses can be disallowed under Section 14A. We do not think that Section 14A or 10(29) permits the said interpretation. Section 14A has been enacted to disallow expenses incurred in relation to income, which does not form part of the total income. Income falling in Section 10(29) is not included in the total income. Therefore, Section 14A would apply. (See Maxopp Investment Ltd. Vs. Commissioner of Income Tax, New Delhi, ITA



No.687/2009 decided by Delhi High Court on 18.11.2011) The plea raised by the appellant is misconceived and is accordingly rejected.

9. Issue No.5

D: Whether the tribunal was right in law in admitting and adjudicating the additional grounds as such and more so during the pendency of application for COD approval?"

10. In view of the decision of the Supreme Court in (2011) 332 ITR 58 titled *Electronics Corporation of India Ltd. vs. Union of India and Ors.*, the aforesaid issue does not survive. COD approval is not required.

11. With the aforesaid observations, the appeal is dismissed.


SANJIV KHANNA, J.


R.V. EASWAR, J.

JANUARY 20, 2012
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