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

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**ITA No. 976/2005**

Reserved on: 11<sup>th</sup> November 2017

Decided on: 7<sup>th</sup> December, 2017

COMMISSIONER OF INCOME TAX, DELHI ....Appellant

Through: Mr. Ruchir Bhatia, Senior Standing Counsel, Mr. Puneet Rai, Junior Standing Counsel and Mr. Gaurav Kheterpal, Advocate.

versus

M/S. MARUTI UDYOG LTD. .... Respondent

Through : Mr. S. Ganesh, Senior Advocate with Ms. Kavita Jha, Mr. S. Sukumaran, Mr. Anand Sukumar, Mr. Bhuwan Dhoopar, Ms. Roopali Gupta and Mr. Bhupesh Pathak, Advocates.

**CORAM: JUSTICE S. MURALIDHAR  
JUSTICE PRATHIBA M. SINGH**

**JUDGMENT**

**07.12.2017**

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**Dr. S. Muralidhar, J.:**

1. This is an appeal by the Revenue against the impugned order dated 28<sup>th</sup> March 2005 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.678/Del/2004 for the AY 2000-01.

2. While admitting this appeal on 24<sup>th</sup> April 2006, the following questions of law were framed for consideration:



i. Whether Tribunal has rightly interpreted sections 43B and 145A of the Income Tax Act, 1961 and is right in impliedly holding that the customs duty paid cannot be included in the value of the closing stock even if the same has been taken as expenditure in the profit and loss account?

ii. Whether the Tribunal was right in law in not confirming the disallowance of Rs.162.33 crores made under Section 43B for want of evidence?

iii. Whether section 43B of the Income Tax Act, 1961 has any relevance for computing value of the closing stock and Tribunal is right in holding that customs duty paid and allowed as a deduction under the aforesaid section cannot be added to the value of the closing stock?

iv. Whether the Tribunal is right in holding that Rs.69,12,41,610/- and Rs.52,74,952/- in respect of customs duty paid and debited to the profit and loss account cannot be included in the value of the closing stock in view of section 43B of the Income Tax Act, 1961?

v. Whether the Tribunal is right in holding that customs duty of Rs.6.25 crore paid on 28.4.2000 can be capitalised with retrospective effect and the depreciation can be allowed by including the said amount in the AY 2000-01?

vi. Whether the Tribunal has correctly interpreted Section 14A of the Income Tax Act and rightly deleted disallowance of Rs.8.82 crores on account of interest under the said provision?

vii. Whether Tribunal should have been dismissed appeal of assessee against the order of the Assessing Officer and upheld by the CIT(A) that income from inter corporative deposits, banks and securities is taxable under the head 'income from other sources'?

viii. Whether Tribunal is right in deleting the addition of Rs.53.05 crore made by the Assessing Officer on account of excess



consumption of raw material and inputs on the sole ground of the discrepancy in the stock having been accepted by the Excise Tribunal as within the tolerance limits?

ix. Whether the order of the Tribunal deleting the addition of Rs.53.05 crore is perverse and fails to take into consideration that the said discrepancy was noticed in the preceding assessment year and the assessee had himself settled the excise claim and paid excise duty of Rs.108 crore on the rates prevalent in the assessment year 1999-2000?

x. Whether the Tribunal was right in law in deleting the disallowance of Rs.37 crore made under section 43B being the amount of custom duty paid on account of discrepancy in the stock register by completely disregarding that the duty was relatable to the purchases which were not accepted as admissible for the purpose of Income Tax Act?

xi. Whether on a correct interpretation of the Explanation (baa) to Section 80HHC (4), the Ld Tribunal is right in holding that the Assessee is entitled to reduce the interest paid from the interest received for the purpose of deduction under section 80HHC of the Act?

3. In view of the decision of this Court today in ITA No. 250 of 2005:

(i) Question (i) is answered in the affirmative i.e. in favour of the Assessee and against the Revenue.

(ii) Question (ii) is answered in the affirmative, i.e. in favour of the Assessee and against the Revenue.

(iii) Question (iii) is answered in the negative, i.e. in favour of the Revenue and against the Assessee by holding that the Tribunal was in error in concluding the customs duty allowed as deduction under Section 43B of the



Act may not be added to the total income.

(iv) Question (iv) is answered in the affirmative, i.e. in favour of the Assessee and against the Revenue.

(v) Question (v) is answered in the affirmative, i.e. in favour of the Assessee and against the Revenue.

(vi) Question (vi) is answered in the affirmative, i.e. in favour of the Assessee and against the Revenue.

(vii) Question (viii) is, in view of the decision passed today in ITA No. 31 of 2005, answered in the affirmative, i.e. in favour of the Assessee and against the Revenue.

(viii) Question (ix) is answered in the negative, i.e. in favour of the Assessee and against the Revenue.

(ix) Question (x) is answered in the negative, i.e. in favour of the Assessee and against the Revenue.

4. Question (vii) is answered in the negative i.e. in favour of the Assessee and against the Revenue in view of the decision dated 31<sup>st</sup> March 2008 of this Court in the Assessee's own case in ITA No. 1711 of 2006. It is pointed out that the Special Leave Petition against the aforesaid order by the Revenue being SLP (C) No. 6291 of 2009 was dismissed by the Supreme Court by order dated 9<sup>th</sup> April 2009.



5. Question (xi) is answered in the affirmative, i.e. in favour of the Assessee and against the Revenue, in view of the decision of the Supreme Court in *ACG Associated Capsules (P) Ltd. v. CIT [2012] 343 ITR 89 (SC)*.

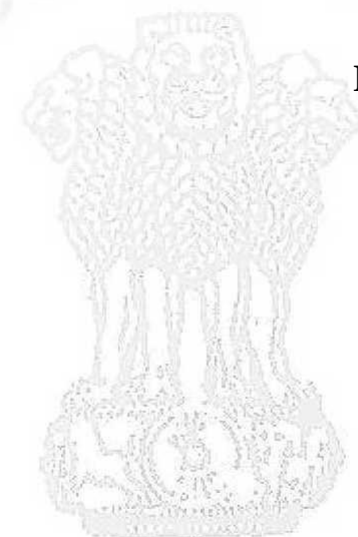
6. ITA No. 976 of 2005 is disposed of accordingly.

**S. MURALIDHAR, J.**

**PRATHIBA M. SINGH, J.**

**DECEMBER 07, 2017**

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