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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ ITA 124/2017

THE PR. COMMISSIONER OF INCOME TAX-4 Appellant
Through : Sh. Puneet Rai, Advocate.

versus

ICON SATELLITE & TELECOM PVT. LTD. Respondent
Through : None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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03.03.2017

In this appeal under Section 260A of the Income Tax Act, 1961 (hereafter "the Act"), the Revenue is aggrieved by the order of the Income Tax Appellate Tribunal (ITAT) for AY 2009-10. The question of law urged is with respect to the genuineness of the discount of ₹1,07,87,411/- provided to a related party, i.e. a sister concern in respect of its sales denoting it to be of the volume. The value of the transactions with the related party, i.e. the said sister concern was to the tune of ₹232.67 crores. The total sales turnover of the assessee was ₹311,91,60,610/-. The Assessing Officer (AO) had added back the said amount of ₹1,07,87,411/- under Section 40A(2)(b) of the Act. The CIT(A) provided relief on the third ground that the addition was revenue neutral. The Revenue appealed to the ITAT which relied upon the judgment of the Supreme Court in *CIT v. Excel Industries Limited* (2013) 358 ITR 295 (SC). It also endorsed



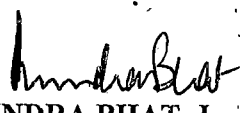
(2)

the view of CIT(A) who had relied upon *CIT v. Gautam Motors* 2011 (334) ITR 326 (Del).

Learned counsel urges that a substantial question of law arises and that the ITAT fell into error because it ignored two salient aspects, i.e. that the discount was so arranged as to have the least tax impact on both the sister concerns, i.e. related parties of the assessee. On this, it is urged that the discounts were given only in respect of transaction aggregating at ₹1,07,87,411/- out of a total amount of ₹232.67 crores. The second aspect urged is that no explanation was forthcoming about why a similar discount was not given to similar parties for previous years. These two aspects stood out in the assessee's case, justifying the addition under Section 40A.

This Court has considered the submissions. The ITAT followed the reasoning of the Supreme Court in *Excel Industries (supra)* and also the judgment in *CIT v. Glaxo Smithkline Asia (P) Ltd.* 2010.(195) Taxmann 35. The lack of any scrutiny by the AO as to the nature of discounts provided to third parties, in our opinion, justified the ITAT's conclusions that in the circumstances of the case, the disallowance made under Section 40A could not be sustained.

No substantial question of law arises. The appeal is accordingly dismissed.


S.-RAVINDRA BHAT, J


NAJMI WAZIRI, J

MARCH 03, 2017/ajk