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

+ ITA 745/2017 and CM No. 32388/2017
 + ITA 751/2017 and CM No. 32403/2017
 + ITA 752/2017 and CM No. 32405/2017 with
 + ITA 755/2017 and CM No. 32409/2017

**ARADHANA DRINKS AND BEVERAGES
 PVT LTD.**

..... Appellant

Through Mr. Deepak Chopra, Mr. Rashmi
 Chopra, Mr. Rashi Khanna and Mr.
 Yojit Pareek, Advocates

versus

COMMISSIONER OF INCOME TAX

..... Respondent

Through Mr. Zoheb Hossain, Sr. Standing
 Counsel and Mr. Deepak Anand, Jr.
 Standing Counsel

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER

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21.08.2018

This common order will dispose of above captioned appeals by Aradhana Drinks and Beverages Pvt. Ltd. ('appellant-assessee' for short) under Section 260A of the Income Tax Act, 1961 ('the Act' for short), assailing the common order of the Income Tax Appellate Tribunal ('Tribunal' for short) dated 05.06.2017 for the assessment years 2008-09 and 2009-10.

2. By order dated 01.12.2017, the following substantial question of law was framed in the present appeal:

"Did the ITAT fall into error in deleting the additions with regard to each of the four years, in respect of which substantial relief had been granted by the CIT(A), in the



circumstances of these cases?"

3. Having heard learned counsel for the parties, and with their consent, the aforesaid substantial question of law is modified to read as under:

“Whether the Tribunal was correct in remanding the issue of the additions made on account of disallowance of operating expenses and rate of depreciation on bottles and crates to the Assessing Officer for a fresh adjudication.”

4. Learned counsel for the parties state that direction for remand on “inflated” operating expenses has been dealt with and upheld in the order passed today in ITA Nos.701-702/2017 in the case of ***Aradhna Foods and Juices Pvt. Ltd. Versus Commissioner of Income Tax***. In fact the appellant-assessee in ITA No. 701-702/2017 did not object and contest the remand on question of operating expenses. We have while examining remand, on disallowance made from purchases from related parties, upheld the same. For the reasoning given in the said order, we uphold the order of remand on the said aspect, and again clarify that the entire question including the submissions and contentions of the appellant-assessee would be examined afresh. We have not commented and made specific observations and findings on merits. First portion of the substantial question of law is accordingly answered against the appellant-assessee and in favour of the respondent-revenue.

5. The Tribunal has remanded in the issue of rate of depreciation on bottles and crates to the Assessing Officer, for the following reasons:-



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(D.1) We find from the perusal of orders of the AO and the Ld.CIT(A) that the above-mentioned points as well as the bottling process have not been fully considered by them. We are of the view that the aforesaid points as well as bottling process need to be first considered at lower level as it requires clear understanding of factual aspects having regard to bottling process, marketing, and related business aspects. We have, in any case, set aside the appellate orders passed by Ld.CIT(A) and assessment orders passed by the AO for both the aforesaid assessees for both A.Y. 2008-09 and 2009-10 and we have already restored the matters to the file of the AO for denovo assessment. We hereby direct the AO to reexamine the matter regarding rate of depreciation on crates, during the proceedings for making denovo assessments and to pass fresh order as per law on this matter in the denovo assessment orders. The AO is directed to provide opportunity to the assessee during the proceedings for making denovo assessment before passing fresh order. These four appeals are disposed off in accordance with our order, directions and observations as aforesaid."

6. Learned counsel for the appellant submits that use of bottles and crates is a matter of common knowledge, and is well known and understood. Bottles and crates are used to store, transport and sell the soft drinks. Factual clarification or elucidation is not required and necessary and issue of rate of depreciation is purely legal and relates to interpretation of Appendix 1 (III) (4) of the Income Tax Rules, 1962.

7. During the course of hearing before us, some controversy had arisen as to whether the issue raised before the Tribunal was relating to rate of depreciation on bottle and crates or only crates. On reading



the grounds of appeal raised before the Tribunal, it is apparent that the issue relates to both bottles and crates.

8. Having noticed the contention raised, we feel that this issue on rate of depreciation applicable to bottles and crates requires re-examination by the Tribunal, who would examine the relevant heads/item in Appendix I and consider whether the appellant is entitled to depreciation @ 50% or 15%. The Tribunal would remand the issue only if it is unable to decide the controversy in view of controversial disputed question of facts that cannot be resolved without an order of remand to the Assessing Officer.

9. Recording the aforesaid, on the second issue in the substantial question of law i.e. rate of depreciation on bottles and crates, we accept the appeal with the direction to the Tribunal re-examine the issue afresh. To this extent substantial question of law is answered in favour of the appellant-assessee and against the revenue. We further clarify that the issue and question of rate of depreciation has not been examined and considered by us on merits. This aspect would be examined by the Tribunal.

10. The appeals are accordingly disposed of, without any order as to costs. The stay orders are vacated.


SANJIV KHANNA, J


CHANDER SHEKHAR, J

AUGUST 21, 2018/b