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

+ ITA 152/2024

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL -
1 Appellant

Through: Mr. Ruchir Bhatia, Sr. Standing
Counsel.

versus

R.J. CORP. LTD. Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR

KAURAV

ORDER

% **04.03.2024**

CM APPL 13333/2024 (Exemption)

1. Allowed subject to all just exceptions.
2. The application stands disposed of.

CM APPL 13334/2024 (delay in refiling)

3. Bearing in the mind the disclosures made, the delay of 365 days in re-filing the appeal is condoned.
4. The application shall stand disposed of.

ITA 152/2019

5. The Commissioner impugns the order of 25 August 2022 and has proposed the following questions of law for our consideration:-

“2.1 Whether on facts and circumstances of the case, the Ld. ITAT erred in restricting the disallowance under section 14A read with Rule 8D to the extent of dividend received on foreign investments, which are anyway taxable and hence not relevant for deciding the disallowance under the said section?

2.2 Whether on facts and circumstances of the case, the Ld. ITAT



erred in not deciding the disallowance under section 14A of interest having direct nexus to strategic and other investments in shares, that are capable of yielding only exempt income?

2.3 Whether on the facts and circumstances of the case the Ld. ITAT erred in not appreciating that the Explanation to section 14A introduced w.e.f. 1st April, 2022 is explanatory in nature and hence has retrospective application?

2.4 Whether on the facts and circumstances of the case, Ld. ITAT erred in accepting the retraction, made long after the admission u/s 132(4) of the income towards claim of expenses of Rs. 10,00,00,000/-?"

6. Insofar as the questions pertaining to Section 14A of the Income Tax Act, 1961 [**“Act”**] read with Rule 8D of the Income Tax Rules, 1962 [**“Rules”**] is concerned, the appellant concedes that the issue stands answered against them in light of the judgment rendered by the Court in **Principal Commissioner of Income-tax vs. Era Infrastructure (India) Ltd.** [2022 SCC OnLine Del 2157].

7. That only leaves us to deal with the surrender of INR 10,00,00,000/- and which forms subject matter of Question No. 2.4. We note that while dealing with the aforesaid issue, the Commissioner of Income Tax (Appeals) [**“CIT(A)”**] in Para 4.1.4 had held as follows:-

“4.1.4 For A.Y. 2011-12, after examining the assessment order, AR’s submissions and the remand report, I have allowed the relevant grounds of appeal and not sustained the AO’s action in rejecting books of accounts estimating the profit. All the facts being similar, including the remand report of the AO, the action of the AO of rejecting books of accounts and estimating the Net profit for the present assessment year also cannot be sustained. The detailed reasons, arguments etc. for such deletion are same as in my order dated today for A.Y. 2011-12 and are not being repeated for the sake of brevity. Following my said order dated today, the addition of Rs. 17,57,29,233/- is liable to be deleted. It is however noted that during the search proceedings the appellant had surrendered Rs.10 crore as additional income “on account of disallowance of expenses and others”. Based on its surrender, the IT Authorities had stopped the investigation into the affairs. Thereafter, the appellant has gone back on its surrender. The action



of the AO in rejecting books of account is being negative for the reasons that no adverse evidences could be found from the books of accounts. However, the same does not mean that the appellant's affairs are in order in all respects especially when the appellant himself had surrendered the income during search action that towards disallowance of expenses. It is noted that the previous year relevant to the present assessment year was about to end as on the date of search (27.03.2012). The appellant best knows his true affairs. It is not the case of surrendered of undisclosed income and its immediate retraction thereafter. But the retraction has occurred after a considerable gap of time. Examination of books cannot be a proper substitute for full thronged investigation which takes place during search & post search proceedings, which was stopped due to surrender of income by the appellant. The doctrine of estoppel operates here. On the basis of appellant's surrender, the investigation was stopped. Therefore, appellant is estopped from going back on its surrender/promise. It is noted here that the scheme of the act does recognize the act of surrender of any undisclosed income at the time of search. Such surrender is one of the significant events of in any search and post search proceedings and it greatly influences the post search investigation. By surrendering the undisclosed income the appellant stops the investigating officer from continuing with investigation on that issue **on the principle that a fact accepted by the other party need not be proved**. Here the surrender was "on account of disallowance of expenses and others". After a long gap, it is very easy to say that there are no discrepancies in the documents. The party has got ample time to set right the weaknesses, if any, in his affairs and also to take care of any deficiencies that could be linked to the contents of the seized papers including third party affairs. Thus any retraction from surrendered income, that too after a considerable time period, only points towards lack of bonafide on the party of the appellant. This is also against the rule of estoppel. A person who by his statement has induced another to believe his words and act in a particular manner, cannot go back and say that what he stated was incorrect. He is estopped from doing so. Therefore, I hold that addition be restricted to Rs. 8,24,33,171 (Rs. 10 crores- 1,75,66,829) and the balance addition is hereby deleted. In the subsequent grounds relating to 14A disallowance and capital gain on sale of shares I am partly confirming the AO's action. The additional income resulting from part confirmation of those grounds would also be telescoped into the above stated Rs. 8,24,33,171/- as the same is covered by the narration of the surrendered income. The AO's action in rejecting the appellant's claim that it had converted the investment into stock-in-trade on 01.0.2010 will be considered at Ground No. 9 below. Subject to this Ground Nos. 1 to 5 are partly allowed."



8. The aforesaid conclusions of fact came to be set aside by the Income Tax Appellate Tribunal [“**ITAT**”] on the ground that the enhancement would not sustain in the absence of there being material to support the addition proposed. In view of the aforesaid, we find that the appeal raises the following question which would merit further consideration.

9. We, accordingly, admit the instant appeal on Question No. 2.4 which reads thus:-

A. Whether on the facts and circumstances of the case, ITAT erred in accepting the retraction, made long after the admission u/s 132(4) of the income towards claim of expenses of INR 10,00,00,000/-?

10. Although, the respondent is stated to have been placed on advance notice, none has appeared on its behalf when the matter was called. Consequently, let learned counsel appearing for the appellant take steps for service upon the respondent through all permissible modes including via approved courier service.

11. Let the appeal be called again on 16.05.2024.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 04, 2024

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