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

+ **ITA 157/2023 and CM APPL. 12487/2023**

**THE PR COMMISSIONER OF INCOME TAX 6 .... Appellant**

Through: Mr Ruchir Bhatia, Sr. Standing  
Counsel.

versus

**NIRJA PUBLISHERS AND PRINTERS PVT LTD..... Respondent**

Through: None.

**CORAM:**

**HON'BLE MR JUSTICE RAJIV SHAKDHER**

**HON'BLE MS JUSTICE TARA VITASTA GANJU**

**ORDER**

% **16.03.2023**

**[Physical Hearing/Hybrid Hearing (as per request)]**

1. This appeal concerns Assessment Year (AY) 2012-13.
2. This appeal seeks to assail the order dated 14.11.2019 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. In passing the impugned order the Tribunal has followed its decision rendered for AY 2011-12.
  - 3.1 Broadly, two issues arose for consideration before Tribunal. First, whether deduction claimed by the respondent/assessee under Section 80IC of the Income Tax Act, 1961 [in short, "the Act"] was sustainable? Second, whether trade discount offered by the respondent/assessee could be treated as commission, as was done by the Assessing Officer (AO)?
  - 3.2 The AO, after treating the trade discount as commission, concluded that since tax had not been deducted at source under Section 194H of the Act, the amount claimed as trade discount had to be added by taking recourse to Section 40(a)(ia) of the Act.

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4. We have asked Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of the appellant/revenue, as to whether the deduction was allowed by the AO in AY 2010-11, which was the initial year in which the petitioner had claimed the benefit under the provisions of Section 80IC of the Act.

4.1. Mr Bhatia affirms the position that the AO had in fact allowed the deduction. However, it is Mr Bhatia's contention that new facts had been found in the succeeding AY i.e., AY 2011-12.

4.2 It is also Mr Bhatia's contention that in the initial AY i.e., AY 2010-11, the return of the respondent/assessee has been processed under Section 143(1) of the Act.

5. We have perused the impugned order. *Prima facie*, according to us, the facts found by the Tribunal in AY 2011-12 do not appear to have undergone a change. Therefore, the AO's view that deduction should be denied under Section 80IC of the Act, seems to be untenable.

5.1 Both the CIT(A) as well as the ITAT have ruled in favour of the respondent/assessee. This is also the position with regard to the second issue, which concerns trade discount.

6. Since Mr Bhatia says that the appeal filed by the appellant/revenue concerning AY 2011-12 is listed on 23.03.2023, at his request, list the above-captioned appeal on the same date i.e., 23.03.2023.

**RAJIV SHAKDHER, J**

**TARA VITASTA GANJU, J**

**MARCH 16, 2023 / tr** [Click here to check corrigendum, if any](#)  
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