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

\+ ITA 211/2024 & CM APPL. 21465/2024 (delay)

THE PR COMMISSIONER OF INCOME TAX IV NEW DELHI ..... Appellant

Through: Mr. Shlok Chandra, SSC with Ms. Madhavi Shukla, Ms. Priya Sarkar, Mr. Sudharshan, Advs.

versus

NTPC VIDYUT VYAPAR NIGAM LTD ..... Respondent

Through: Mr. Ved Jain, Mr. Nishchay Kantoor, Ms. Soniya Dodeja, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% 10.04.2024

CM APPL. 21466/2024 (Ex.)

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

CM APPL. 21465/2024 (delay)

3. Bearing in the mind the disclosures made, the delay in refilling the appeal is condoned.

4. The application shall stand disposed of.

ITA 211/2024

5. Notice. Since the respondent is duly represented, no further steps need be taken.

6. Having heard Mr. Chandra, learned counsel appearing for the

appellant as well as learned counsel for the respondent, we are of the considered opinion that the appeal would merit further consideration.

7. Insofar as the question of the retention amounts received by the respondent assessee pursuant to an encashment of the bank guarantee is concerned, the Income Tax Appellate Tribunal ["**ITAT**"] has held as follows:-

> "**7.1 Grounds raised in the Revenue's appeal and ground no. 1 and 2 of the appeal of Assessee.** There is no dispute to the fact that the assessee is carrying on Government of India mission working on behalf of the Government of India. The contracts have been executed under the policy in directions of Government of India. The bank guarantee was taken and encashed under the guidelines of the concerned ministry. The encashed amounts are deposited in a separate bank account as per the direction of Government of India. The directions of the Government of India through Ministry of New and Renewable Energy to not treat the amount encashed from bank guarantee as income leave no doubt that the assessee was so far making irregular treatment of the amounts of bank encashment and interest thereupon by showing the same as income of the assessee. Thus, the assessee being custodian of the Government money such money into the hands of assessee cannot be termed as income at any stage.
>
> 7.2 The Bench is of considered opinion that Ld. CIT(A) was not in error in giving the finding that appellant is merely custodian of the money received from encashment of bank guarantee and that the assessee has rightly treated the amount receive on encashment of bank guarantee during financial year as a liability along with the interest is liability. However, he failed to appreciate that the directions of the ministry being clarificatory in nature and also carrying a mandate of compliance by the assessee cannot be prospective only. The administrative directions in financial matter of Government entities have to be taken to be retrospective to time to which controversy relates unless specifically directed to be prospective. Accordingly, Ld. CIT(A) erred in disallowing the reversal of amount received as bank guarantees and interest for earlier years to the extent of Rs. 1,15,82,16,659/-. Accordingly, the issue in the Revenue's appeals are decided against the Revenue and the issue no. 1 in the appeal of assessee is decided in favour of the assessee."

8. It is in the aforesaid backdrop that Mr. Chandra contends that a

letter of the Ministry would not be determinative of the issue of taxability. Similar questions appear to arise from the findings returned by the ITAT insofar as it relates to deletion of additions in respect of expenses towards superannuation benefits as well as Corporate Social Responsibility ["**CSR**"].

9. Insofar as the question of CSR is concerned, we also take note of the insertion of Explanation 2 by virtue of Finance Act (No.2), 2014 and which came into effect from 01 April 2015.

10. The said Explanation reads as follows:-

> "**13. Amendment of Section 37.—**
>
> **xxx xxx xxx**
>
> "Explanation 2.—For the removal of doubts, it is hereby declared that for the purposes of sub-section (1), any expenditure incurred by an assessee on the activities relating to corporate social responsibility referred to in Section 135 of the Companies Act, 2013 (18 of 2013) shall not be deemed to be an expenditure incurred by the assessee for the purposes of the business or profession"

11. We thus are of the considered opinion that the appeal would merit admission on the following questions of law:-

> "A. Whether on the facts, circumstances and law of the case, the Hon'ble ITAT was correct in deleting the addition of Rs.1,38,17,87,106/- made on account of retention of bank guarantee encashment?
>
> B. Whether on the facts and circumstances of the case, the Hon'ble ITAT was correct in deleting the addition of Rs. 1,34,00,970/- made on account of prior period expenses towards superannuation benefits?
>
> C. Whether on the facts and circumstances of the case, the

Hon'ble ITAT was correct in deleting the addition of Rs. 11,75,593/- made on account of expenses incurred on CSR?

12. List again on 09.07.2024.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 10, 2024/neha