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

+ ITA 279/2022

**PR. COMMISSIONER OF INCOME TAX-7, DELHI**

Through: Mr.Puneet Rai, Sr.Standing Counsel  
for the Revenue. .... Appellant

versus

**SPL INDUSTRIES LTD.** ..... Respondent

Through: Dr.Rakesh Gupta with Mr.Somil  
Agarwal, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE MANMOHAN**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**ORDER**

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**23.08.2022**

Present Income Tax Appeal has been filed challenging the order dated 29<sup>th</sup> January, 2021 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.5302/Del/2014 for the Assessment Year 2005-06.

Learned counsel for the Appellant states that the ITAT has erred in deleting the addition made by the Assessing Officer on account of running and maintenance expenses of foreign office amounting to Rs.2,05,16,000/-. He also states that the ITAT has erred in deleting the addition made by the Assessing Officer on account of quota expenses amounting to Rs.4,32,39,948/-. He further states that the ITAT has erred in deleting the addition of Rs.1,12,76,154/- made by the Assessing Officer on account of



advance recovery by way of income from financial transaction amounting to Rs.1,16,32,526/-.

Both the appellate authorities below i.e. the ITAT and the CIT (A) have given concurrent finding of facts on all the issues raised in the present appeal. The relevant portion of the ITAT's order is reproduced hereinbelow:-

*“6.0 We have heard the rival submissions and have also perused the material on record. We have also gone through the impugned order, the submissions made by the assessee and the paper book filed by the assessee. As far as the appeal of the Department is concerned, it is seen that Ground No.1 of the department appeal challenges the action of the Ld. CIT(A) in deleting the addition amounting to Rs.2,05,16,000/- pertaining to running and maintenance expenses of foreign office. It is seen that these foreign expenses have been debited by the assessee company to the Profit & Loss Account under the head manufacturing, administrative and other expenses under the sub-head miscellaneous expenditure in Schedule-13 of the audited accounts. These expenses are in the nature of payments made to assessee's foreign representative in USA, Mr. Danny Williams who has been claimed to be looking after the interest of the company in the USA. It has been claimed by the assessee that Mr. Danny Williams was performing functions relating to sales promotions, procuring orders, providing assistance in logistic issues, assistance in inspection of company's products, assistance in collection of payments and advising etc. It has further been claimed that all the payments made to Mr. Danny Williams were made in foreign currency as per the norms of RBI through State Bank of India. The Ld. CIT(A), while deleting the addition, has noted that the Assessing Officer has not doubted the genuineness of the expenditure incurred and the Ld. CIT(A) has also noted that the expenditure incurred is duly supported by documentary evidences like vouchers, Bank Advices, and*



*correspondences. A perusal of the assessment order passed u/s 147 of the Act shows that the Assessing Officer has based the addition merely on the reasons recorded for reopening wherein it has been stated that this expenditure was not allowable as per the provisions of the Act. How and why this expenditure was not allowable has not been specified by the assessing office. Before us also, the Ld. Sr. DR could not point out any perversity in the findings of the Ld. CIT (A) on the issue. We also note that this amount has been duly disclosed in the audited financial statements and no fresh material on the issue has been brought on record by the Assessing Officer. Undisputedly, the reassessment is beyond the period of four years and, therefore, it was incumbent upon the Assessing Officer to point out specifically as to how the escapement of income from tax on this issue could be attributed to any fault on the part of the assessee. Therefore, in view of the categorical findings recorded by the Ld. CIT (A) that no adverse inference was drawn by the Assessing Officer and that the payment was duly supported and evidenced by and evidenced by documentary evidences and that the genuineness of expenditure incurred was not doubted by the AO, we find no reason to interfere with the findings recorded by the Ld. CIT(A) and, we upheld the same.*

*6.1 Ground no.2 of the Department's appeal pertains to deletion of addition amounting to Rs. 4,32,39,948/- pertaining to quota expenses. It is seen that the assessee company is into exports of Garments manufactured by it. The quota was allotted on year to year basis and, therefore, it had no enduring benefit. While deleting the addition, the Ld. CIT (A) has noted that the assessee company had been incurring quota expenses from year to year and in Assessment Year 2004-05 i.e. the immediately preceding assessment year, the assessee company had incurred quota expenses amounting to Rs. 1,85,92,535/- and since this expenditure did not result in creation of any tangible or intangible assets, it was necessarily incurred as part of the profit earning process and was, therefore, revenue in nature. In the assessment Order passed u/s 147 of the Act, the Assessing Officer has not*



*pointed out any reason for treating this expenditure as capital expenditure but has only as referred to the reasons recorded for reopening and has disallowed the same. Even the Ld. SR. DR could not point out any perversity in the findings of the Ld. CIT (A) on the issue. The Ld. CIT (A) has also placed reliance on a judgment of the Hon'ble Madras High Court in the case of M.S. Kandappa Mudaliar vs. CIT reported 32 ITR 313, wherein it was held that the expenditure. Therefore, on this issue also, the contention of the Department fails and the order of the Ld. CIT (A) is upheld.*

*6.2 The third issue under challenge by the Department is deletion of addition of Rs.1,12,76,154/- on account of advance recoverable by way of income from financial transactions'. The Ld. CIT (A) has noted that the amount debited to income from financial transactions receivable' was in respect of income already credited under the head 'income from financial transactions' amounting to Rs. 1,12,76,154/- shown under Schedule -12 of the audited annual accounts under the Main Head " Exchange Fluctuations" and under the head " Misc. Receipts" amounting to Rs. 10,58,343/- shown under the Main Head " Other Income" under Schedule-12 of audited accounts. The Ld. CIT (A), while deleting the disallowances, has noted that this was a case of double taxation of income as the same was already part of the profit shown by the assessee in its income tax return and was again added back in the order passed in reassessment proceedings. The Ld. Sr. DR could not point out any perversity in the finding of the Ld. CIT (A) that this amount had come to be taxed twice. Accordingly, on the findings of the Ld. CIT (A) and we uphold the same."*

In view of the aforesaid findings, this Court is of the view that the issues involved in the present appeal are entirely factual. This Court finds that the impugned order is clear and cogent. There is also no perversity in the impugned order.



Consequently, no substantial question of law arises for consideration in the present appeal and the same is accordingly dismissed.

**MANMOHAN, J**

**MANMEET PRITAM SINGH ARORA, J**

**AUGUST 23, 2022**  
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