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

+ **ITA 397/2023**

MATRIX CELLULAR -INTERNATIONAL- SERVICES PRIVATE LIMITED Appellant

Through: Mr Manuj Sabharwal with Ms Shalini, Advs.

versus

JOINT COMMISSIONER OF INCOME-TAX SPECIAL RANGE 6, NEW DELHI Respondent

Through: Mr Sanjeev Menon, Standing Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

25.07.2023

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Physical Hearing/Hybrid Hearing (as per request)]

CM No.37205/2023

1. Allowed, subject to the appellant filing legible copies of the annexures, at least three (3) days before the next date of hearing.

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2. This appeal concerns Assessment Year (AY) 2016-17.

3. Via this appeal, challenge is laid to the order dated 18.01.2023 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

4. Mr Manuj Sabharwal, learned counsel, who appears for the appellant, contends that the impugned order is flawed for the following reasons:

(i) First, it is cryptic in nature.

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(ii) Second, the disallowance of expense claimed with regard to Swachh Bharat Cess [in short, “SBS”] by resorting to Section 43B(a) of the Income Tax Act, 1961 [in short “the Act”] was unfair, as it was sprung on the petitioner for the first time *via* the order dated 29.12.2018, issued by the Assessing Officer under Section 143(3) of the Act.

(iii) Third, the appellant had claimed the amount quantified as “SBC receivable”, i.e., Rs. 21,35,436/-, as expense under Section 37 of the Act.

(iv) Fourth, the Tribunal failed to appreciate that SBC represents a part of the payment made to/by the petitioner to its vendors, and is not part of any statutory liability. In this context, it is important to note that the amount is initially shown as a current asset in the books of account, and is later carried to the Profit and Loss account at the end of the accounting year, since credit is not available *qua* the same against any cess/tax.

5. Mr Sabharwal has elaborated his contention by emphasizing that SBC is not part of the Cenvat Credit Chain.

6. In support of his plea, Mr Sabharwal has referred to the following FAQ.

“Q.14 Whether Cenvat Credit of the SBC is available?

Ans . SBC is not integrated in the Cenvat Credit Chain. Therefore, credit of SBC cannot be availed. Further, SBC cannot be paid by utilizing credit of any other duty or tax”.

[Emphasis is ours]

7. Mr Sabharwal also submits that where SBC is payable on reverse charge basis, the requisite amount payable towards SBC is deposited in the State Treasury.

7.1 Mr Sabharwal states that where cess is payable on forward charge



basis, the same is paid to the vendor, who in turn has a liability cast on him to deposit the same with the State Treasury.

8. According Mr Sabharwal, in this case, both the amount deposited with the State Treasury, and the amount paid or payable to the vendor, are claimed as an expense under Section 37 of the Act.

9. *Prima facie*, according to us, this matter requires examination of facts by the statutory authorities.

10. Mr Sanjeev Menon, learned standing counsel, who appears on behalf of respondent/revenue, says that he will return with instructions as to whether the respondent/revenue will be agreeable to the matter, concerning the aforesaid aspect, being remanded to the Assessing Officer.

11. List the appeal on 29.08.2023.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 25, 2023/RJ

Click here to check corrigendum, if any