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

+ **ITA 580/2023 & CM APPL. 53515/2023**

PR. COMMISSIONER OF INCOME TAX -7, DELHI..... Appellant
Through: Mr Puneet Rai, Sr Standing Counsel
with Mr Nikhil Jain, Adv.

versus

P C JEWELLERS LTD. Respondent
Through: Ms Aabgina Chishti, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

% **13.10.2023**

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

1. This appeal concerns Assessment Year (AY) 2013-14.
2. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 07.12.2021 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. To be noted, the aforementioned order is also common to the respondent's/assessee's case concerning AY 2014-15.
4. Mr Puneet Rai on behalf of the appellant/revenue has proposed the following questions of law for consideration by this court:

“(A) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal [“ Tribunal”] was right in applying the CBDT Notification No.56/2012 dated 31.12.2012 which came in force with effect from 01.01.2013 and deleted the addition made by the AO on account of non- deduction of TDS qua expenditure amounting to Rs.1,82,53,095/-

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incurred on account of Credit Card and Debit Card Commission?

(B) Whether on the facts and in the circumstances of the case, the Tribunal was right in accepting the additional ground for claiming expenses through cross objection although the respondent/assessee company had neither claimed the same in Income Tax Return nor raised the issue with the Assessing Officer or Commissioner of Income Tax (Appeals)?

(C) Whether on the facts and in the circumstances of the case, the Tribunal was right in allowing the share issue expenses as revenue expenses u/s 37(1) of the Act ignoring the fact that the said expenses were in the capital expenditure?

(E) Whether on the facts and in the circumstances of the case, the Tribunal erred in allowing the expenditure on IPO while computing Book Profit u/s 115JB of the Act?

(F) Whether on the facts and in the circumstances of the case, the Tribunal was right in allowing the deduction concerning Education Cess paid under section 37 of the Act ?

(G) Whether on the facts and in the circumstances of the case, the Tribunal erred in allowing deduction qua education Cess even while the CBDT had issued a clarification in the 2022 Budget and accordingly proposed an amendment with retrospective effect i.e., AY 2005-06? ”

5. Insofar as the proposed question (A) is concerned, it is covered against the appellant/revenue and in favour of the respondent/assessee by virtue of the judgment rendered by the coordinate bench of this court in ***CIT v. JDS Apparels Pvt. Ltd.***, (2015) 370 ITR 454.

6. We may also note that the proposed F and G is evidently covered in favour of the appellant/revenue by virtue of a retrospective amendment made in Finance Act, 2022 to Section 40(a)(ii) of the Income Tax Act, 1961 [in short, “Act”]. The amendment has been brought into force w.e.f. 01.04.2005.

7. This aspect has been noticed in the judgment rendered by the Supreme Court in ***JCIT v. Chambal Fertilizers and Chemicals Ltd.***, (2023) 450 ITR 164 (SC).

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8. Insofar as the other aspects are concerned, issue notice to the respondent/assessee.

8.1. Ms Aabgina Chishti accepts notice on behalf of the respondent/assessee.

9. List the matter on 15.02.2024.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

OCTOBER 13, 2023

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[Click here to check corrigendum, if any](#)

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