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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
26 & 30

+ **ITA 633/2010**

THE COMMISSIONER OF INCOME TAX-III Appellant
Through: Mr. Rohit Madan, Senior Standing Counsel.

versus

TONY ELECTRONICS LIMITED Respondent
Through: Mr. Satyen Sethi, Advocate.

+ **ITA 1053/2010**

THE COMMISSIONER OF INCOME TAX-III Appellant
Through: Mr. Rohit Madan, Senior Standing Counsel.

versus

TONY ELECTRONICS LIMITED Respondent
Through: Mr. Satyen Sethi, Advocate.

CORAM:
DR. JUSTICE S.MURALIDHAR
MR. JUSTICE VIBHU BAKHRU

% **ORDER**
05.10.2015

1. ITA No.633/2010 is an appeal by the Revenue against the order dated 17th July 2009, passed by the Income Tax Appellate Tribunal (ITAT) in ITA No.48/Del/2002 for the Assessment Year (AY) 1996-97.



2. ITA No.1053/2010 is an appeal by the Revenue against the order dated 17th July, 2009, passed by the ITAT in ITA No.4220/Del/2001 for the AY 1996-97.

3. In both the appeals, the Revenue seeks to urge the following questions for consideration by the Court:

(a) Whether on the facts and in the circumstances of the case, the Ld. ITAT erred in law and on merits in allowing deduction under Section 80HH of the Income Tax Act, 1961 (Rs.63,97,717) and under Section 80I of the Income Tax Act, 1961 (Rs.79,97,146) in respect of profit of Namoli Unit and deduction under Section 80IA of the Income Tax Act, 1961 (Rs.8,22,387) in respect of Malanpur Unit?

(b) Whether on the facts and in the circumstances of the case, the Ld. ITAT erred in law and on merits in deleting the disallowance of loss in respect of Unit-I amounting to Rs.6,40,398?

(c) Whether on the facts and in the circumstances of the case, the Ld. ITAT erred in law and on merits in reducing the disallowance of loss of Unit-II by Rs.1,22,37,122?

(d) Whether on the facts and in the circumstances of the case, the Ld. ITAT erred in law and on merits in allowing depreciation of Rs.2,82,532 in respect of Namoli Unit?

4. Question (a) is admittedly covered in favour of the Assessee and against the Revenue by the decision of this Court in *CIT v. Tony Electronics Ltd. (2015) 375 ITR 431 (Del.)*. Consequently the Court is not inclined to frame a question of law on this issue.



5. Question (b) is common to both ITA Nos.633/2010 and 1053/2010. This question pertains to disallowance of the loss of Unit-I, i.e. Noida Unit. In the earlier AY 1995-96 against the order of the AO ordering disallowance of Rs.66,25,885, the Commissioner of Income Tax (Appeals) [CIT(A)] had while disposing of the Assessee's appeal, sustained the disallowance to the extent of Rs.26,80,087. For the present AY, the loss was Rs.21,28,193 and here again the CIT(A) allowed only 1/3rd relief. The ITAT has found that facts for AY 1996-97 were different from AY 1995-96. In this AY, i.e. 1996-97, commercial production had resumed forty (40) days after the trial production whereas in 1995-96, there was a gap of more than one (1) year.

6. The above finding of the ITAT appears to have been based on the facts and, therefore, the Court is of the view that no substantial question of law arises.

7. Question (c) pertains to disallowance of losses of Unit-II at Noida, which is involved in the production and sale of Video Magnetic Tapes. The Assessing Officer (AO) proposed an addition of Rs.4.05 crore on account of suppression of sales and closing stock because of which the Assessee had declared a loss. The CIT(A) noted the serious discrepancies in the order of the AO, which had resulted in directions being issued under Section 144A by the Additional CIT restricting disallowance to 10 per cent of the gross profit on sales.



8. The ITAT in the impugned order has noted that losses had been incurred in Unit-II in the earlier AY, i.e. 1995-96, as well as the succeeding AY, i.e. 1997-98. Accordingly, the addition sustained by the CIT(A) was entirely deleted by the ITAT. The view taken by the ITAT appears to be a plausible one in the facts of the case.

9. Question concerns (d) the disallowance of depreciation in respect of the Namoli Unit. The question is covered in favour of the Assessee and against the Revenue by the decision of this Court in *CIT v. Tony Electronics Ltd. (2015) 375 ITR 431 (Del.)*.

10. The appeals are accordingly dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

OCTOBER 05, 2015

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