

\$~
*
6
+

IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 395/2015

COMMISSIONER OF INCOME TAX-LTU Appellant
Through: Ms. Suruchi Aggarwal, Senior Standing
counsel with Ms. Lakshmi Gurung, Junior
Standing counsel and Mr. Abhishek Sharma and
Ms. Radhika Gupta, Advocates.

versus

POWER FINANCE CORPORATION LTD. Respondent
Through: Mr. Mayank Nagi, Advocate.

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

01.10.2015

%

1. This appeal by the Revenue is directed against the order dated 28th November 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2598/Del/2012 for the Assessment Year ('AY') 2007-08.

2. The question of law before the ITAT was whether the order dated 30th March 2012 passed by the Commissioner of Income Tax ('CIT') under Section 263 was justified in law.

3. The CIT by the said order concluded that the order dated 29th September 2009 passed by the Assessing Officer ('AO') allowing deduction under

Sections 36(1) (viia) (c) and 36 (1) (viii) of the Act in favour of the Assessee was erroneous as well as prejudicial to the interest of the Revenue.

4. The ITAT in the impugned order noticed on the question whether the total income for the purposes of Section 36(1) (viia) (c) should be computed after allowing the deduction under Section 36 (viii) of the Act, there were at least two possible views as reflected in the orders of the ITAT Delhi in ***Rural Electrification Corpn. v. Additional Commissioner of Income Tax (2009) 34 SOT 159 Delhi*** and of the Chennai Bench of the ITAT in ***Infrastructure Development Finance Co. Ltd. v. ACIT*** (order dated 29th March 2007 in ITA No. 747,748/Mds/2005).

5. During the course of hearing today it transpired to the Court that, independent of the aforementioned two decisions, the stand of the Revenue as set out in its memorandum of appeal, and that of the Assessee before us, viz., that both deductions [under Section 36 (1) (viia) (c) and 36 (viii)] are independent of each other, give rise to two further possible interpretations.

6. The Court is satisfied that in terms of the law explained by the Supreme Court in ***Malabar Industrial Co.Ltd. v. CIT 243 ITR 83(SC)*** as followed by

this Court in its recent decision dated 5th July 2010 in ITA No. 1376 of 2009 (*CIT v. Honda Siel Power Products Ltd.*) the view taken by the AO in the present appeal is a possible one and there was no occasion for the CIT to have exercised jurisdiction under Section 263 of the Act. The impugned order of the ITAT therefore does not suffer from any legal infirmity. No substantial question of law arises.

7. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

OCTOBER 01, 2015

mg