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

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ITA 644/2015

PR. COMMISSIONER OF INCOME TAX-09 Appellant

Through Ms Suruchi Aggarwal, Senior Standing
Counsel with Ms Lakshmi Gurung, Junior
Standing Counsel.

versus

WESTERN INDIA SHIPYARD LIMITED Respondent
Through

CORAM:

HON'BLE DR. JUSTICE S.MURALIDHAR

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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25.08.2015

1. This appeal is filed against the order dated 25th February, 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2615/DEL/2012 for the assessment year 2006-07.

2. It is recorded in the impugned order of the ITAT that the Assessing Officer ('AO') rejected the claim made by the Assessee by way of a letter, during the assessment proceedings, for deduction of the bad debts written off by him, on the ground that it could have only been made by way of revised return under Section 139(5) of the Act. The CIT (A), however,

accepted the Assessee's claim and granted the deduction. The ITAT on an analysis of Sections 36(1) (vii) and 36 (2) of the Act observed that the bad debts written off during the previous year can be allowed as deduction provided it was taken to the account in computing the income of the Assessee for the relevant year. The ITAT rightly observed that while the CIT (A) could have considered such claim even during the course of the appellate proceedings otherwise than by way of a revised return, the CIT (A) did not examine whether, in fact, the Assessee had taken such debts into consideration while computing its total income. It was for that purpose that the ITAT remanded the matter to the AO for a decision afresh.

3. It is urged by Ms. Suruchi Aggarwal, learned Senior Standing counsel for the Appellant, on the strength of the decision of the Supreme Court in ***Goetze (India) Ltd. [2006] 248 ITR 323 (SC)***, that the ITAT erred in accepting the claim of the Assessee for deducting the bad debts written off, without insisting that it could only be done by filing a revised return.

4. The said decision in ***Goetze (India) Ltd.*** is in the context of the lack of the power of the AO to entertain a claim for deduction, during assessment proceedings, otherwise than by a revised return. The ITAT is right in

holding that while there was a bar on the AO entertaining such claim without a revised return being filed by the Assessee, there was no such restraint on the CIT (A) during the appellate proceedings. However, while permitting such a claim the CIT (A) ought to have examined whether in fact the bad debts were written off by the Assessee in the first instance in the accounts and then taken into consideration while computing the income. The remand of the matter to the AO for that purpose was, therefore, justified.

5. No substantial question of law arises. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

AUGUST 25, 2015
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