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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 19th September, 2012

+ **ITA 430/2012**

CIT-I

..... Appellant

Through: Mr. Deepak Chopra, Sr. Standing
Counsel with Mr. Harpreet Singh
Ajmani, Advocate.

versus

ANAND NISHIKAWA COMPANY LTD

..... Respondent

Through: Mr. Arta Trana Panda, Advocate.

CORAM:

MR. JUSTICE S. RAVINDRA BHAT

MR. JUSTICE R.V. EASWAR

S. RAVINDRA BHAT, J.: (OPEN COURT)

1. The Revenue claims to be aggrieved against an order of the Income Tax Appellate Tribunal ('Tribunal', for short) dated 16.12.2011 in ITA No.43/Del/2011 the question of law which arises is whether the Tribunal fell into error in directing a remand of the matter to the CIT(A) in so far as it pertains to the findings relating to the assessment of fringe benefit. The brief facts are that the assessee's assessment was framed by an order under Section 143(3) of the Income Tax Act, 1961 ('Act', for short) dated 01.12.2008. The fringe benefit tax order was passed separately on 30.12.2008 and the assessee's liability under Section 115WE of the Act was assessed. The assessee carried the matter in appeal to the CIT(A) in two separate appeals; Appeal

No.145/2008-09 pertains to the additions and disallowances made in the regular proceedings under Section 143(3) of the Act and Appeal No.157/2008-09 pertains to the disallowances under the FBT. The CIT (Appeals), apparently unmindful of the pendency of the two appeals decided the entire matter i.e., assessment of the income and assessment of the fringe benefits in Appeal No.145/2008-09, on 25.08.2010. A separate order was made on the appeal vis-à-vis liability under Section 115WE of the Act, (in Appeal No.157/2008-09) on 11.10.2011.

2. The assessee's appeal to the Tribunal against the order of the CIT(A) in Appeal No.145/2008-09 was disposed of by the Tribunal on 16.12.2011 through remit order directing the CIT (Appeals) to decide all the issues after providing due opportunity of hearing to the assessee. It is essential to notice that the assessee preferred appeal to the Tribunal only in respect of order pertaining to the regular assessment under Section 143(3) of the Act. The order made on its appeal i.e. 157/2008-09 pertaining to FBT, had apparently achieved finality, as the same had not been appealed. The confusion in this case was the consequence of the CIT (Appeals) treating the Appeal No.145/2008-09, as a composite one and encompassing the FBT issues, whereas the reality was that a separate appeal (Appeal No.157/2008-09) was pending and was subsequently disposed of. This error was not pointed out to the Tribunal. In these circumstances, the Tribunal's order is modified so far as it pertains to the fringe benefit tax. The Appeal No.157/2008-09 had achieved finality.

3. At this stage it would be essential to notice that the assessee claims that it was unaware of the order dated 11.10.2011 passed by the CIT(A) dismissing

its Appeal No.157/2008-09, since it was disposed of ex-parte. It would be in the fitness of things that if the assessee approaches the Tribunal with an appeal against the said order the same would be considered having regard to the totality of the facts and if any application for condonation of delay is made the same shall be considered and the appeal will be heard.

4. The appeal is disposed of in the above terms.

S. RAVINDRA BHAT, J.

R.V.EASWAR, J.

SEPTEMBER 19, 2012

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