

\$~40

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

+ ITA 114/2019 & CM APPL. 5201/2019

INTERNATIONAL TRACTORS LTD. Appellant

Through: Mr. Satyen Sethi, Advocate

versus

DY. COMMISSIONER OF INCOME TAX (LTU),
& ANR.

..... Respondents

Through: Mr. Ajit Sharma, Senior Standing
Counsel for Revenue with Mr. A.
Renganath, Advocate.

%

Date of Decision: 09th November, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

CM APPL. 5201/2019 (for delay)

Keeping in view the averments in the application, the delay of 13 days in filing the present appeal is condoned.

Accordingly, the present application stands disposed of.

ITA 114/2019

1. The present income tax appeal is admitted on the following questions of law:



- i. Whether two procedures envisaged by section 250(4) of the Act are different and whether under first part of section 250(4) of the Act, procedure of opportunity to the Assessing Officer is envisaged?
 - ii. Whether in the absence of any perversity, remand of the relief allowed by the CIT(A) in exercise of powers under first part of section 250(4) of the Act cannot be made, for it would render the power infructuous?
 - iii. Whether on the facts and circumstances of the case and in law, ITAT was right in law in setting aside grant of deduction under section 80JJAA of the Act which was allowed by the CIT(A) after due verification in exercise of powers under section 250(4) of Act?
 - iv. Whether on the facts and circumstances of the case and in law, ITAT was right in law in setting aside deduction of loss on exchange rate fluctuations allowed by the CIT(A) after due verification in exercise of powers under section 250(4) of Act?
2. Admittedly, the issue of grant of deduction under Section 80JJAA of the Income Tax Act, 1961 (the ‘Act’) has been decided in assessee’s favour in the preceding Assessment Year (‘AY’) 2007-08 by a Coordinate Bench of this Court in the case of Assessee itself being *International Tractors Ltd. v. Deputy Commissioner of Income-tax (LTU) and Another, [2021] 435 ITR 85 (Delhi)*. The relevant portion of the said judgment is reproduced hereinbelow:

“14. Therefore, to our minds, once the Tribunal accepted the view taken by the Commissioner of Income-tax (Appeals) that it could entertain fresh claims; a view which the Commissioner of Income-tax (Appeals) has expressed in paragraph 6.6.2 of its



order, all that the Tribunal was required to examine was: as to whether the Commissioner of Income-tax (Appeals) had, scrupulously, verified the material placed before it before allowing deductions claimed by the assessee. The Tribunal, however, instead of examining this aspect of the matter, observed, and in our view, incorrectly, that because an opportunity was not given to the Assessing Officer to examine the material, therefore, the matter needed to be remanded to the Assessing Officer for a fresh verification.

15. In our view, unless the Tribunal would have reached to a conclusion and expressed its clear view, in that respect, as to what was wrong or missing in the examination made by the Commissioner of Income-tax (Appeals), a remand was not called for. We agree with Mr. Seth's contention that the Commissioner of Income-tax (Appeals) in the exercise of its powers under section 250(4) of the Act was entitled to seek production of documents and/or material to satisfy himself as to whether or not the deductions claimed were sustainable/viable in law. This was, however, a case where the details were placed before the Assessing Officer, who declined to entertain the claims only on the ground that they did not form part of assessee's original return and that the assessee had not made a course correction by filing a revised return.

15.1 This view was based, as noticed above, on the judgment of the Supreme Court rendered in Goetze (India)Ltd. (supra). The Commissioner of Income-tax (Appeals), squarely, dealt with this and concluded, that a fresh claim could be entertained. Therefore, the Tribunal, as noticed above, has accepted this view of the Commissioner of Income-tax (Appeals) and the revenue has not come up in appeal before us assailing this conclusion of the Tribunal.

xxx

xxx

xxx

17. Therefore, in our view, the judgment of the Tribunal deserves to be set aside. The fresh claims made by the assessee, as



allowed by the Commissioner of Income-tax (Appeals), will have to be sustained. It is ordered accordingly.

18. The questions of law are answered in the favour of the assessee and against the revenue.”

3. Consequently, the first three questions of law are decided in favour of the assessee and against the revenue.
4. Though the last question of law namely, deduction of loss on account of exchange rate fluctuation has not been dealt with in the aforesaid judgment, yet the logic/reasoning given in the said judgment applies as the Tribunal has not given any cogent reason for remanding the matter.
5. Consequently, as the impugned order is non-reasoned, the same is set aside and the detailed order passed by the Commissioner of Income Tax (Appeals) [‘CIT(A)’] on all issues including the issue of loss arising on account of exchange rate fluctuation is sustained.
6. Accordingly, the present appeal is allowed and the questions of law are decided in favour of the assessee and against the revenue.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 09, 2022

msh

