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

\+ **ITA 213/2020**

COFORGE LIMITED (FORMERLY KNOWN
AS NIIT TECHOLOGIES LTD.) ..... Appellant

Through: Mr. Rohit Jain and Mr. Aniket D. Agrawal, Advocates.

versus

ACIT ..... Respondent

Through: None.

\+ **ITA 214/2020**

COFORGE LIMITED (FORMERLY KNOWN
AS NIIT TECHNOLOGIES LTD.) ..... Appellant

Through: Mr. Rohit Jain and Mr. Aniket D. Agrawal, Advocates.

versus

ACIT ..... Respondent

Through: None.

\+ **ITA 215/2020**

COFORGE LIMITED (FORMERLY KNOWN
AS NIIT TECHNOLOGIES LTD.) ..... Appellant

Through: Mr. Rohit Jain and Mr. Aniket D. Agrawal, Advocates.

versus

ACIT ..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% 13.01.2021

CM APPL. 32632/2020 (for exemption) in ITA 214/2020
CM APPL. 32634/2020 (for exemption) in ITA 215/2020

1. Exemption allowed, subject to all just exceptions.

2. The applications stand disposed of.

CM APPL. 32631/2020 (for condonation of delay) in ITA 213/2020
CM APPL. 32633/2020 (for condonation of delay) in ITA 214/2020
CM APPL. 32635/2020 (for condonation of delay) in ITA 215/2020

3. There is a delay of 85 days in re-filing the appeals. For the reasons stated in the applications, the delay is condoned.

4. The applications stand disposed of.

ITA 213/2020 & ITA 214/2020

5. These present appeals under Section 260A of the Income Tax Act, 1961 ['the Act'] are directed against the common order dated 28th January, 2020 passed by the Income Tax Appellate Tribunal in respect of Assessment Years 2007-08 and 2008-09 whereby the Tribunal has upheld the additions/ disallowances made by the assessing officer, and confirmed by the Commissioner of Income Tax (Appeals) ['CIT(A)'] under section 35DD and 14A of the Act.

6. With respect to the disallowance under Section 35DD, Mr. Rohit Jain, the learned counsel for the Appellant contends that the Appellant had incurred expenditure aggregating to Rs. 2,20,03,694/- on account of legal and professional expenses in Assessment Years 2004-05 for pursuing the scheme of demerger of NIIT Ltd and it claimed a deduction of 1/5th of the aforesaid expenditure in the computation of income, for five consecutive Assessment Years. Learned counsel for the Appellant submits that the Income Tax Appellate Tribunal has erred in disallowing the expenditure under Section 35DD of the Act and has proceeded on patently erroneous legal premise that, in a demerger, the resulting company is not in existence at the time of demerger, without appreciating that demerger is a part of the process of arrangement under Sections 391 to 394 of the Companies Act, 1956 (as applicable in the relevant year) between two or more existing companies. He further submits that the Tribunal failed to appreciate that even on facts, which are undisputed, the Appellant (resulting company) existed on the date of demerger. He further argues that the Tribunal erred in upholding the disallowance under Section 35DD of the Act in spite of the undisputed fact that 1/5th of the very same expenditure already stood accepted and allowed in regular assessments of the Appellant for Assessment Years 2004-05 to 2006-07 and therefore, the residual expenditure claimed could not have, in any circumstance, been disallowed in the year under consideration.

7. With respect to the question pertaining to administrative expenditure disallowance under Sub-Section (2) and (3) of Section 14A of the Act, Mr. Jain submits that an essential pre-requisite for making disallowance

thereunder is the recording of satisfaction by the assessing officer with respect to the claim of the Assessee, to the effect that no expenditure in relation to the exempt income has been incurred by the Assessee, or, that the expenditure *suo motu* disallowed by the assessee is inadequate. He submits that in the absence of such satisfaction, the invocation and application of Section 14A of the Act and adjustments made thereunder would be untenable in law. He further argues that the Tribunal erred in law in sustaining and not deleting the disallowance under Section 14A of the Act to the extent of 0.5% of average value of investments which yielded exempt income during the relevant year. He submits that the Tribunal failed to appreciate that: (a) the disallowance was based on presumed incurring of expenditure; and (b) no valid satisfaction, which is a *sine qua non* for application of the said Section, was recorded by the assessing officer for rejecting the claim of the Appellant.

8. Having heard the learned counsel for the Appellant, we admit the present appeal and frame the following questions of law:

> *(i) Whether, on the facts and in the circumstances of the case, the Tribunal erred in law in upholding the disallowance of Rs.44,00,739/- claimed under section 35DD of the Act, being 1/5th of expenses incurred in assessment year 2004-05 on demerger of certain units of NIIT and vesting of the same in the Appellant, on the incorrect premise that such deduction is allowable only in the hands of the demerged company (NIIT) and not the resulting company (Appellant)?*
>
> *(ii) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in sustaining and not deleting the disallowance under Section 14A of the Act, to the extent of 0.5% of average value of investments which yielded exempt income during the year?*

9. Issue notice to the Revenue by all the permissible modes, returnable on 6th April, 2021.

10. It is clarified that at this stage the Revenue has not been heard, and thus at the time of the hearing of the appeal, it shall be allowed to argue that the case does not involve the above-noted questions of law framed in this Court.

ITA 215/2020

11. This present appeal also arises from the same impugned order dated 28th January, 2020. In this appeal, the Appellant herein raises a question regarding the commuted one-time lease rental of Rs. 77,98,042/- paid by the Appellant during Assessment Year 2007-08. Mr. Jain submits that the expenditure is revenue in nature, and this finding of fact has been confirmed by the CIT(A), but was overturned by the Income Tax Appellate Tribunal. He argues that the Tribunal has erred by not following the judgment of Supreme Court in the case of ***Taparia Tools Ltd. v. JCIT***, 372 ITR 605 (SC), inasmuch as that since the payment was in the nature of advance rental for the entire period i.e. for 90 years, and had been paid in terms of the option given under the lease deed in a commuted manner, the Appellant was entitled to claim reduction in respect thereof in the relevant year in question.

12. Accordingly, we admit the present appeal by framing the following substantial questions of law:

> *(i) Whether on the facts and in the circumstances of the case, the Tribunal erred in law in not deleting in-toto the disallowance of*

one-time commuted/discounted lease rent amounting to Rs.77,98,042/- (equivalent to 11 times annual rent) made by the assessing officer?

(ii) Whether the Tribunal erred in law in travelling beyond the scope of the appeal and the case set-up by the assessing officer/CIT(A) and argued by the Revenue, contrary to the mandate of Section 254 of the Act, and that too, without confronting the said reasoning / basis to the Appellant (through its counsel) at the time of hearing?

13. Issue notice to the Revenue by all the permissible modes, returnable on 6th April, 2021.

14. It is clarified that at this stage the Revenue has not been heard, and thus at the time of the hearing of the appeal, it shall be allowed to argue that the case does not involve the above-noted questions of law framed in this Court.

RAJIV SAHAI ENDLAW, J

SANJEEV NARULA, J

JANUARY 13, 2021/*nd*