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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 364/2016

PRINCIPAL COMMISSIONER OF INCOME TAX-07..... Appellant

Through: Mr. Dileep Shivpuri, Senior Standing
counsel and Mr. Sanjay Kumar, Junior Standing
counsel

versus

M/S OMNI INFO WORLD PVT. LTD. Respondent

Through: Mr. Kapil Goel, Advocate.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE NAJMI WAZIRI

ORDER

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29.07.2016

1. This appeal by the Revenue is directed against the order dated 23rd November 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.1837/Del/2013 for the Assessment Year ('AY') 2009-10.

2. The Revenue is aggrieved by the order of the ITAT to the extent it has deleted an addition of Rs. 70 lakhs made by the Assessing Officer ('AO') on account of unexplained cash.

3. The brief facts are that the Assessee is stated to be engaged in the business of trading of computer hardware/software and other IT related items. It filed its return on 29th September 2009, declaring a total income of Rs. 37,95,500. A search operation was undertaken under Section 132 of the

Income Tax Act, 1961 ('Act') at New Delhi Railway Station on 22nd August 2008 in the case of Mr Vishan Singh and Mr Mukesh Kumar Jadon. A sum of Rs. 45 lakhs was seized. Mr. Jadon in his statement admitted to have carried Rs. 25 lakhs on 5th August 2008 to be delivered to the Bhubaneswar office. He was supposed to have delivered cash of Rs. 8 lakhs in Chennai on 6th June 2008. By a letter dated 23rd December 2010, the Assessee was asked to explain why a sum of Rs.78 lakhs should not be treated as unexplained income and added to its income for the AY 2009-10.

4. The Assessee in its reply dated 28th December 2010 pointed out that it had already surrendered a sum of Rs. 247.19 lakhs and that the aforementioned amount transferred to Chennai and Bhubaneswar, and seized at the Railway Station were all part of the aforementioned sum which stood surrendered. It was pointed out that treating the above sum as income would amount to taxing twice the surrendered amount. The Assessing Officer ('AO') gave a set off for the sum of Rs. 8 lakhs and proceeded to add Rs. 70 lakhs to the disclosed income.

5. The short question that arose was whether the sum of Rs.70 lakhs formed part of the surrendered amount of Rs. 247.19 lakhs? The Commissioner of Income Tax (Appeals) ['CIT(A)'] disagreed with the Assessee and by order dated 29th February 2012 dismissed the appeal. The Assessee then appealed to the ITAT.

6. What is significant is that in the proceedings before the ITAT there is a discussion of a cash flow chart prepared by the Assessee from its books of accounts. This sought to explain that the cash available with the Assessee

and which was surrendered formed the source for the amounts transferred to Bhubneshwar and Chennai and seized at the New Delhi Railway Station. The ITAT discussed the break up of surrendered amount and its utilisation as under:

“6.As per the detailed breakup of the entries passed by the assessee on account of surrender shows that an amount of Rs.45,00,000 seized by Income Tax Department and Rs. 25,00,000 being cash sent to Bhuvneshwar shown as ‘cash to BBS’ as per page no 6 of the paper book. As per page 2 of the paper book, cash flow statement shows that as on 6.8.2008 assessee was having the cash balance of Rs. 1,50,85,236 and out of which on 31.7.2008 an amount of Rs. 6,14, 597 was spent on Infoage, on 5.8.2008, Rs. 25,00,000 utilized for sending the cash to Bhuvneshwar and on 22.8.2008 cash was seized by Income Tax Department of Rs. 45,00,000. As per that statement assessee still has the balance of Rs. 74,70,639 as at 22.8.2008 which is taken in to the books of accounts. **This cash flow statement is not controverted by the AO as well as CIT(A) when it was specifically submitted that same is made based on the entries made in the cash book immediately after the surrender of Rs.2,47,85,236.**” (emphasis supplied)

7. Although, it was asserted by the learned counsel for the Revenue that the Department has disputed the books of accounts of the Assessee, the above passage from the impugned order of the ITAT states to the contrary. There is not a single line in the memorandum of appeal before this Court to that effect. Learned counsel for the Revenue referred to the decision in *Anantharam Veerasinghaiah & Co. v. Commissioner of Income Tax, AP (1980) 123 ITR 457 (SC)* which spoke of the inference to be drawn when an intangible addition is to be made to the book profits, on the basis that the amount represented by that addition constitutes the undisclosed income.

8. The facts of the present case are not comparable in any manner to the facts of the above case. Here the explanation offered by the Assessee through the cash flow statement, which has found favour with the ITAT has not been doubted by the Revenue.

9. Consequently, the Court is unable to find any error in the impugned order of the ITAT.

10. No substantial question of law arises for consideration. The appeal is dismissed.

S. MURALIDHAR, J

NAJMI WAZIRI, J

JULY 29, 2016

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