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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 611/2018

Date of decision: 13th December, 2018

PR. COMMISSIONER OF INCOME TAX, DELHI -2..... Appellant

Through: Mr. Ashok K. Manchanda, Sr.
Standing Counsel

Versus

M/S. BHARTI VENTURES LTD. Respondent

Through: Mr. Arvind Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

SANJIV KHANNA, J. (ORAL)

This appeal by the Revenue under section 260A of the Income Tax Act, 1961 (Act, for short) in the case of M/s Bharti Ventures Limited relates to the assessment year 2008-2009 arising from the order passed by the Income Tax Appellate Tribunal (Tribunal, for short) on 16.11.2017.

2. Learned senior standing counsel for the Revenue, relying upon the assessment order, submits that the respondent-assessee was not engaged in any business activity as no business had been set up or had commenced during the assessment year in question. There were no fixed assets, no receipts and expenses relatable to main objects as per Memorandum of Association.

3. Respondent-assessee had filed return declaring loss of Rs. 7.06 crores for the Assessment Year 2008-2009.

4. The assessment order in paragraph 4.2 refers to the letter and explanation given by the respondent-assessee stating that it was established with the main object to promote, undertake, carry on, acquire the business of setting up/providing operating/running of call centres and infrastructure facilities or services such as telecom services, information technology, intranet and internet etc. Reliance was placed on the heading 'main objects' in the Memorandum of Association of the respondent-assessee which read as under:-

- 1.To promote, undertake, carry on, acquire either on its own or by entering into agreements, contracts, partnership, alliance or any other arrangement for technical, financial and operational assistance of sharing of profits/losses with any person/body/bodies corporate incorporated in India or abroad either under a strategic alliance or joint venture or any other arrangement, the business of setting up/providing/operating/running of call centre(s) and/or infrastructural facilities or services such as telecom services, information technology, intranet, internet, e-commerce and related hardware, software.*
- 2.To promote, undertake, carry on, acquire either on its own or by entering into agreements, contracts, partnership, alliance or any other arrangement for technical, financial and operational assistance of sharing of profits/losses with any person/body/bodies corporate incorporated in India or abroad either under a strategic alliance or Joint Venture or any other arrangement, the Business to carry on the business of agriculture, horticulture and floriculture produce as importer, exporter and wholesaler, set up model farms, processing centres, cold storage, freezing warehouse, R&D, analytical & testing laboratories for sorting, processing, refining,*

preserving, dehydrating, freezing, packing and repacking of all kinds and every description of fruits & vegetables, floriculture, horticulture and all other agriculture produce.

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4.To promote, establish, undertake, carry on, invest in, acquire either on its own or by entering into agreements, contracts, partnership, alliance or any other arrangement for technical, financial and operational assistance, for sharing of profits/losses with any person/body/ bodies corporate incorporated in India or abroad either under a strategic alliance or joint venture or any other arrangement, the business of creating a pool/reservoir of technical, administrative, managerial persons, consultants, advisors of varying qualifications, experience and expertise in different fields of business and industry whether manufacturing or services or otherwise and place their services on hire and/ or supply such manpower with any individual, firm, Company, Organisation, Government Department or others in India or abroad, from time to time, according to the needs of the organisation(s), to act as managers, consultants and advisers in security matters, to investigate, research and examine the matters requiring intelligence and security services for individuals and business concerns with regard to their conditions, prospects, value, character, assets, liabilities, properties or rights and to establish and run Training Institute(s) for providing in house and external training, monitoring of job performance and developing personnel to undertake various jobs according to the needs of the Industry.

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9.To promote, establish, undertake, carry on, invest in, acquire either on its own or by entering into agreements, contracts, partnership, alliance or any other arrangement for technical, financial and operational assistance for sharing of profits/losses with any person/body/ bodies corporate incorporated in India or abroad either under a strategic alliance or joint venture or any other arrangement, the business of life insurance and annuity in relation to any or all kinds of insurance/assurance, whether of a kind now known or hereafter devised, including life and annuity

assurance, general insurance/assurance or any kind of insurance or assurance or any contract of indemnity against loss of human life, dependant on human life or any assets and generally to carry on and transact any and every kind of insurance, which may legally be carried on or transacted, including that which is not comprised in any of the above descriptions of business.

5. We have quoted from the relevant Memorandum of Association as the letter of the respondent-assessee dated 24.11.2010 had referred to the said Memorandum of Association, copy of which had been furnished to the Assessing Officer.

6. In the aforesaid circumstances, the disallowance of the entire business expenditure of Rs.52,573,792/- was set aside by the Commissioner of Income Tax (Appeals) accepting the respondent-assessee's contention that the investments made were in terms of main objects of promoting, undertaking, carrying on, acquiring the business specified in the objects. The respondent-assessee has undertaken business by making investments in other corporate bodies, as stipulated in the Memorandum. Referring to Schedule 3 of the balance sheet, Commissioner of Income Tax(Appeals) observed that the respondent-assessee had made investment in subsidiary companies carrying on the business specified in its main objects. Thereafter, relying on judgment of the Supreme Court in **S.A. Builders Ltd. vs. Commissioner of Income Tax (Appeals)**(2007) 288 ITR 1 (SC), the Commissioner of Income Tax (Appeals) had held:-

“On a careful consideration of the submissions made by the appellant it is observed that the basic contention of the appellant is that while it's main objects is to promote, undertake, carry on, acquire the business of setting

up/providing/running of call centres/infrastructural facilities or services such as telecom services and that it is towards this larger objects that the appellant company has undertaken investment activity in subsidiary companies, which are carrying on similar business as specified in it's main object. The line of the argument of the appellant is that therefore the business of the appellant company was set up as soon as the investments were made and therefore all revenue expenses incurred after setting up of business is allowable as business expenditure. Placing reliance on the decision of Hon'ble Supreme Court in S.A. Builders Ltd. 288 ITR 1 the appellant has further argued that the investment made by the company was for the purposes of the business and therefore the expenses incurred thereon have to be allowed as a deduction. In this connection the appellant has referred to Schedule-3 of the Balance Sheet which shows that investments were made in Teletech Services India Ltd. which is in the business of call centre and rendering services through telecom network. Further that investments in Bharti Resources Ltd. is in terms of object no.4 of the Memorandum of Association and investment made in First American Securities is in terms of object no.9 of the Memorandum of Association.

The short question to be decided in this case is whether the assessee company has to necessarily and directly operate the businesses as mentioned in the Memorandum of Association so as to qualify as carrying out business activity or whether making of investment in subsidiaries which in turn are operating in the business as referred in the Memorandum of Association of the appellant company is reason enough to hold that the business of the appellant has been set up in terms of it's Memorandum of Association. In my considered view there is no legal or statutory requirement of direct and first hand business operations to be conducted by the appellant himself and indulgence in business activities through subsidiaries who are in same line of business activities as stipulated in Memorandum of

Association. Accordingly, the ground of appeal is allowed. The AO is therefore directed to allow carry forward of business loss as claimed by the appellant in the revised return.”

7. The aforesaid findings have been affirmed by the Tribunal after referring to decisions that acquisition of controlling interest in the companies can be in furtherance of business purpose of the assessee. In the case in question, the respondent-assessee has made investments in the companies which are in the same and specified line of business, in terms of the objective. Schedule 3 of the balance sheet refers to the details of the said companies. This is not in dispute.

8. During the course of hearing, learned counsel for the respondent-assessee has placed before us copy of the assessment orders passed under Section 143(3) for the assessment years 2009-2010 and 2010-2011 wherein the Assessing Officer has not disputed and challenged that the assessee was engaged in business, though there was no change in the nature of business activity undertaken by the respondent-assessee.

9. There is no merit in the present appeal and the same is dismissed.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

DECEMBER 13, 2018/uj