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

+ ITA 103/2018

PRINCIPAL COMMISSIONER OF INCOME TAX-7

..... Appellant

versus

M/S RMSI PRIVATE LIMITED

..... Respondent

+ ITA 104/2018 & CM APPL. 3707/2018

PRINCIPAL COMMISSIONER OF INCOME TAX-7

..... Appellant

versus

M/S RMSI PRIVATE LIMITED

..... Respondent

Present: Mr. Sanjay Kumar, Jr. Standing Counsel for Revenue.
None for respondent.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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31.01.2018

1. One common question of law is urged in both the appeals i.e. the disallowance of expenditure incurred on account of acquisition of MAP Software. The AO initially held that the MAP Software amounted to a capital expense against which the assessee appealed to the CIT(A). The CIT(A) concurred with the submission. The ITAT, however, granted relief holding that the expenditure was revenue in nature. In support of this argument, the Revenue relies

upon a judgment of the Rajasthan High Court in *Commissioner of Income Tax v. Aravalli Construction Company* 259 ITR 30. On the other hand, the ITAT held that for the past years in 1996-97 and 1997-98 relief had been given to the assessee. During that period, the rationale followed was that in the field of computer softwares new devices and user friendly concepts were developed and introduced which needed to be upgraded. This Court sees no infirmity in the Tribunal's reasoning.

2. The other question of law urged for A.Y. 2003-04 (in ITA No.103/2018) is with respect to the claim made under Section 10A of the Income Tax Act, 1961. The assessee made the claim during the assessment proceedings. The AO was of the opinion that Section 10(9) applied on account of an apparent re-arrangement of the shareholding pattern of the company. The CIT(A) concurred, after taking into account a later development i.e. omission of Section 10(9) with effect from 01.04.2004. The ITAT, however, accepted the assessee's plea and allowed the benefit of Section 10A. The ITAT reasoned that the omission of Section 10(9), was so as to create a fiction whereby the sub-Section never existed.

3. The facts relating to the re-organization set out are in following part of the CIT(A)'s order:

“4. 73.5% of the shares of the Company were held by RMS Inc. in March 1998. RMC Inc. is a Company located in USA and is a part of (Daily Mirror) DMGI group. In 2002, with a view to

reorganize the holdings, this 73.5% share of the Company were acquired by DMGI Inc. of USA directly.

It would be seen that major part of the shares were held by DMGI group and they continue to be held by them even after the change.

In view of the above, it is submitted that benefit of section 10A should be allowed to the Company as there is no change in the beneficial ownership of the Company.”

Although the CIT(A) rejected the assessee's contention, what is apparent is that the DGMI Group – of which the holding company appeared to be the Daily Mirror Inc., was also the holding company of the assessee's parent i.e. RMS Inc. The latter i.e. RMS Inc. held 73.5% of the assessee's shareholding. RMS Inc. divested its shareholding in favour of its parent company i.e. DGMI, during the year in question.

4. In the opinion of this Court, even with Section 10(9), the contention of the assessee that there was no transfer of ownership but re-organization of the corporate structure or pattern of shareholding within the group, had to be accepted. In these circumstances, the question of law urged does not arise; the appeals are, therefore, dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JANUARY 31, 2018/kks