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* IN THE HIGH COURT OF DELHI AT NEW DELHI
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+ ITA 267/2019

THE PR. COMMISSIONER OF INCOME TAX -6 ..... Appellant
Through: Mr Ruchir Bhatia, Senior Standing Counsel for the Revenue.

versus

NETAMBIT VALUE FIRST SERVICES PVT. LTD ..... Respondent
Through: Mr Ved Jain, Ms Mekhala Benny and Mr Kislaya Parashar, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE I.S. MEHTA

O R D E R
% 17.05.2019

CM 13240/2019 (delay)
1. For the reasons explained in the application, the delay in re-filing the appeal is condoned and the application is allowed.

ITA 267/2019
2.The Revenue is in appeal against an order dated 17th November, 2017 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.6477/Del./2014 for the Assessment Year ('AY') 2010-11.

3. The question sought to be urged by the Revenue in this appeal is whether the ITAT and the Commissioner of Income Tax (Appeals) ['CIT (A)'] erred

in deleting the addition of Rs.4,49,14,054/- made by the Assessing Officer ('AO') on account of change in method of accounting of the Assessee, which enabled the reduction of tax liability of the Assessee on income earned by way of insurance agency commission?

4. The Assessee is engaged in the business of consultancy and advisory services and provides marking support to insurance companies. Its return of income for the AY in question was selected for scrutiny. While framing the assessment, the AO made the above addition on account of non-disclosure of change in the method of accounting. According to the AO, the Assessee was bound to disclose the income on accrual basis and could not postpone the revenue in view of the services already provided by it. According to the AO, the policy renewal date gave the Assessee the right to earn commission income on renewal of such policy.

5. When the matter travelled in appeal before the CIT (A), reference was made to the financial policy adopted by the Assessee in respect of 'revenue recognition', as was disclosed in the Auditor's report. It reads as under:

> "Revenue is recognized to the extent that is probable that the economic benefits will flow to the company and the revenue can be reliably measured. Commission for insurance agency business is recognized in the month of insurance / renewal of the policy and on payment of premium by the policy holder.
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> During the current year, the company has re-evaluated its accounting policy and has accordingly linked the commission income to the payment of premium by the policy holder. This has been primarily driven due to historical trends and past experience. The impact in lieu of the aforesaid change in accounting policy for the year is Rs. 44,914,054/-".

6. The Assessee pointed out that the actual commission that had accrued during the AY in question was Rs.l,64,43,940/- which was related to the payment of renewal premium. On the other hand, the Revenue placed reliance on Accounting Standard-9 ('AS-9'), which reads as under:

> "B. Rendering Of Services
> 2. Advertising and insurance agency commissions Revenue should be recognised when the service is completed. For advertising agencies, media commissions will normally be recognised when the related advertisement or commercial appears before the public and the necessary intimation is received by the agency, as opposed to production commission, which will be recognised when the project is completed. Insurance agency commissions should be recognised on the effective commencement or renewal dates of the related policies."

7. The Assessee also contended that even if AS-9 would apply, the above Revenue Recognition Policy deployed by it would be consistent with it. The Assessee stressed on the word 'effective' to mean the actual payment of the renewal premium as being the date on which the right to earn commission by the Assessee accrued. The CIT (A) accepted the above stand of the Assessee and issued the following directions to the AO:

> "However, considering the finding of the AO that assessee has failed to reconcile the difference of Rs. 2,84,70,114/- (44914054 - 16443940), therefore, the AO is directed to examine the account of Rs. 4.49 crores and verify whether premium in respect of all the policies appearing therein are paid by the policy holders in F.Y. 2010-11 and in subsequent period. If so, no addition is called for. Since the amount of Rs. 4.49 crores pertains to hundreds of policies, therefore, the AO may resort to random verification. Needless to mention that AO will provide sufficient opportunity to the assessee to produce the

> account of commission of Rs. 4.49 crores with supporting evidences. In the result, this ground of appeal is allowed with direction to the AO."

8. Aggrieved by the above order of the CIT (A), the Revenue went in appeal before the ITAT, which concurred with the view of the CIT (A). The ITAT noted that the Assessee had adopted the mercantile system of accounting consistently even in the subsequent AYs, and that was accepted by the Revenue. For the AY in question, the Assessee could not be taxed for the amount of commission that it had not actually earned. The ITAT held that "the commission which is to be accrued and due and payable in the next financial years only cannot be taxed in the year under assessment".

9. Additionally, it is pointed out by Mr Ved Jain, learned counsel appearing for the Assessee on advance notice, that the change adopted by the Assessee in the method of accounting, has been accepted by the Revenue for the four subsequent AYs, which were all scrutiny assessments.

10. In that view of the matter, the Court is not persuaded that any substantial question of law arises for consideration of the Court. The appeal is accordingly dismissed. No costs.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MAY 17, 2019
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