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

% *Date of decision: 01.12.2023*

+ **ITA 673/2023 and CM APPL. 61973/2023**

**THE CHIEF COMMISSIONER OF INCOME TAX –
CENTRAL -1(OSD)**

..... Appellant

Through: Mr Ruchir Bhatia, Sr. Standing
Counsel with Ms Deeksha Gupta,
Advocate

versus

VISHNU APARTMENTS PVT. LTD.

..... Respondent

Through: Mr Sachit Jolly, Advocate.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This appeal concerns Assessment Year (AY) 2010-11.
2. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 30.01.2020 passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].
3. According to Mr Ruchir Bhatia, learned senior standing counsel, who appears on behalf of the appellant/revenue, the only issue which the appellant/revenue is aggrieved by in the instant appeal, concerns the deletion of an addition amounting to Rs.47.07 crores made by the Assessing Officer (AO).



4. To be noted, the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] *via* the order dated 14.08.2014, deleted the addition made by the AO. The order of the CIT(A) has been confirmed by the Tribunal.
5. The root cause for the addition made by the AO is the collaboration agreement dated 06.09.2004 [in short, “collaboration agreement”], which has been executed between the respondent/assessee and an entity named, MGF Development Ltd. [hereafter referred to as “MGF”].
 - 5.1 The collaboration agreement concerned an integrated hotel project in Jaipur. The project involved the construction of a mall and a hotel. The hotel went by the name, Hotel Fortune Select Metropolitan.
6. The record shows that the integrated hotel project was transferred/sold to an entity named M/s. Multitude Infrastructure Pvt. Ltd. for a consideration of Rs.95 crores. The total revenue earned from the project in the period in issue was Rs.135 crores.
7. The collaboration agreement entered into between the respondent/assessee and MGF cast several obligations upon the latter, which included providing and securing funds, bank guarantee and technical expertise for the integrated hotel project. In lieu thereof, the respondent/assessee was required to pay 60% of the revenue earned from the transfer/sale of the integrated hotel project to MGF. The amount that was eventually paid by the respondent/assessee to MGF was Rs.57.07 crores.
8. According to the appellant/revenue, the collaboration agreement captured a sham transaction, and therefore, AO had correctly made an addition of Rs.47,07,37,143/-, after making suitable adjustments towards technical expertise and brand value.
9. As noticed above, CIT(A) and the Tribunal have ruled in favour of the



respondent/assessee, and consequently deleted the addition made by the AO. In reaching this conclusion, the Tribunal has taken note of the following aspects, which are not contested by the appellant/revenue:

- (i) The AO allowed deduction of Rs.5,87,72,012/-, which represented expenses incurred out of the funds provided by MGF.
- (ii) Rs.4,04,90,845/- paid by the respondent/assessee to MGF as brand fee, i.e., as compensation for utilisation of the latter's brand, was also allowed by the AO.
- (iii) Rs.57.07 crores, which was the gross amount that had been remitted by the respondent/assessee to MGF, was accepted by the AO of MGF in an assessment order dated 25.05.2012 framed under Section 143(3) of the Income Tax Act, 1961 [in short, "the Act"].

10. In sum, it was the Tribunal's view that the contention of the appellant/revenue that the collaboration agreement represented a sham transaction was not established. As noted above, the consideration for sharing the revenue was provided by MGF in the form of funds, technical support/assistance for execution of the project and the benefit of its brand value that had been acquired perhaps over the year.

10.1 The Tribunal thus concluded that the obligation cast on the respondent/assessee to share the revenue from the project represented commercial expediency. In a nutshell, the Tribunal applied the well-established principle that the AO could not have put itself in "the armchair of the businessman" and decide what amount would pass as a reasonable expenditure, *vis-à-vis* the subject project.

11. In our view, having regard to the findings of facts returned both by the CIT(A) and the Tribunal, no interference is called for. As was correctly



concluded by the Tribunal, the amount received by MGF had been offered for tax and quite clearly, addition in that regard could not have been made in the hands of the respondent/assessee, once the remittance had been accepted in the hands of MGF. In a manner of speech, in our view, what is sauce for the goose is also sauce for the gander.

12. Accordingly, the appeal is closed, as we find that no substantial question of law arises for our consideration.

CM APPL. 61973/2023 [*Application filed on behalf of the appellant seeking condonation of delay of 430 days in re-filing the appeal*]

13. Given the order passed in the above-mentioned appeal, this application has been rendered inefficacious.

14. The application is, accordingly, closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

DECEMBER 01, 2023 / tr