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

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Date of decision: 03.08.2023

+ **ITA 422/2023**

SAMTEL GLASS LIMITED

..... Appellant

Through: Mr Manibhadra Jain, Advocate.

versus

DEPUTY COMMISSIONER OF INCOME TAX CIRCLE 22(1)

DELHI & ANR.

..... Respondents

Through: Mr Puneet Rai, Sr. Standing Counsel
with Ms Madhavi Shukla and Mr
Ashvini Kumar, Standing Counsel.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE ANISH DAYAL

ORDER

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03.08.2023

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

RAJIV SHAKDHER, J.: (ORAL)

CM APPL.39259/2023

1. Allowed, subject to just exceptions.

ITA 422/2023

2. This appeal concerns Assessment Year (AY) 2015-16.

3. The appellant/assessee is aggrieved on account of the fact that the Income Tax Appellate Tribunal [in short, "Tribunal"] *vide* order dated 10.05.2023 has sustained an addition of Rs.8,55,17,103/- by disallowing what, according to it, was a genuine business loss.



4. What emerges from the record and is not in dispute is the following:
- (i) First, the appellant/assessee had entered into an agreement dated 23.01.2010 with a company which is presently known as Samtel Avionics Ltd. [in short, “SAL”]. Under the said agreement, the appellant/assessee was required to supply specialized glass used in the avionics industry.
 - (ii) Second, SAL conducted inspections in March-April 2010 which revealed defects in the product manufactured by the appellant/assessee.
 - (iii) Third, SAL forfeited the security deposit which was made over by the appellant/assessee, on account of failure on its part to supply the product.
 - (iv) Fourth, the amount which was forfeited was Rs.6,95,80,595/- Rs.1,59,36,508/-, which was also added to the income of the respondent/assessee, was written off by SAL in FY 2014-15.
 - (v) Fifth, the communication with regard to the forfeiture of the security deposit was served on the petitioner *via* a letter dated 22.02.2015. The inspection reports which are dated 24.03.2010 and 08.04.2010 were produced, according to Mr Manibhadra Jain, only before the Tribunal. There is no written correspondence placed on record exchanged *vis-à-vis* the defects found in the product which was subject matter of the aforementioned agreement entered into between the appellant/assessee and SAL.
 - (vi) Sixth, the original agreement dated 23.01.2010 was not produced before any of the statutory authorities by the appellant/assessee.
5. Having perused the record, it is quite clear that this is a case involving appreciation of the circumstances surrounding the working of the aforementioned agreement and the material placed on record by the appellant/assessee.



6. While we agree with Mr Jain that the Tribunal could not have made an observation to the effect that, since better technology was available, they ought not to have entered into an arrangement with SAL, what has persuaded us to uphold the impugned order is that no material that was produced by the appellant/assessee to establish the transaction in issue was genuine.

7. As noted by the authorities below; firstly, the appellant/assessee failed to produce the original agreement.

7.1. Secondly, the amount which was forfeited towards security deposit was an odd amount. As noticed above the amount in issue is Rs.6,95,80,595/-.

7.2 Thirdly, the forfeiture notice was issued only on 22.02.2015, when, even according to the appellant/assessee, SAL had discovered that product was not of requisite quality, much earlier.

7.3. Lastly, the write off of Rs.1,59,36,508/- was carried out by SAL only in Financial Year (FY) 2014-15 [AY 2015-16], although, according to the appellant/revenue, the defect in the product and its usefulness was discovered way back in March-April 2010.

8. We may also note that it is not in dispute that the appellant/assessee, at the relevant time, held 10% SAL's equity and some Directors were common to the appellant/assessee as well as SAL.

9. It may be also relevant to note that, in support of his case, Mr Jain has argued that insofar as the security deposit which was forfeited by SAL was concerned, it had paid service tax on the said amount. On being queried, Mr Jain says that the relevant document was produced, for the first time, before the Tribunal.



9.1 In our view, this cannot impact the conclusion reached by the Tribunal, as what was required to be ascertained was whether the agreement dated 23.01.2010 represented a genuine arrangement.

9.2. Significantly, the service tax document is dated 29.03.2019.

10. Therefore, for the forgoing reasons, we are not inclined to interfere with the impugned order.

11. The appeal is disposed of in the aforesaid terms.

RAJIV SHAKDHER, J

ANISH DAYAL, J

AUGUST 3, 2023 / tr