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

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Date of Decision: 22.08.2023

+ **ITA 471/2023**

RVM EDUCATION (P) LTD

..... Appellant

Through: Ms Kavita Jha with Mr Vaibhav Kulkarni and Mr Himanshu Aggarwal, Adv.

versus

ASSISTANT COMMISSIONER OF INCOME TAX Respondent

Through: Mr Sunil Agarwal, Sr. Standing Counsel with Mr Shivansh B. Pandya, Jr. Standing Counsel and Mr Utkarsh Tiwari, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

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

RAJIV SHAKDHER, J. (ORAL):

CM APPL.43033/2023 [*Application filed on behalf of the appellant seeking condonation of delay of 26 days in filing the appeal*].

1. This is an application moved on behalf of the appellant/assessee seeking condonation of delay in filing the appeal.

1.1 According to the appellant/assessee, there is a delay of 26 days.

2. Mr Sunil Agarwal, learned senior standing counsel, who appears on behalf of the respondent/revenue, says that he would have no objection if the delay is condoned.



3. Given the period of delay involved and the stand taken by Mr Agarwal, we are inclined to condone the delay. It is ordered accordingly.

4. The application is disposed of, in the aforesaid terms.

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5. We have heard the learned counsel for the parties.

6. According to us, the appeal requires to be admitted. It is ordered accordingly.

7. The following question of law is framed for consideration:

(i) Whether the Tribunal misdirected itself in law and on facts in not considering the material on record and simply applying the ratio of the judgment rendered by the Supreme Court in ***Chennai Properties and Investment Ltd. vs. Commissioner of Income Tax (Appeals)***, 373, ITR 673?

8. With the consent of the learned counsels for the parties, the appeal is taken up for hearing and final disposal at this stage itself.

9. This appeal concerns Assessment Year (AY) 2016-17.

10. *Via* this appeal, the appellant/assessee has assailed the order dated 06.02.2023, passed by the Income Tax Appellate Tribunal [in short, “Tribunal”].

11. The record shows that the appellant/assessee had filed its return on 14.10.2016, whereby it declared a loss amounting to Rs.1,99,18,341/-.

12. The Assessing Officer (AO) disallowed certain expenses claimed by the appellant/assessee and thus assessed the loss at Rs. 1,14,40,865/-.

12.1 To be noted, the expenses disallowed by the AO amounted to Rs. 84,77,476/-.

13. The controversy, thus, which attracted the attention of the AO and the statutory authorities above him in the hierarchy, pivots around a very narrow



issue.

14. But first, the facts: The appellant/assessee had executed two agreements. The first agreement was a lease agreement dated 02.11.2012 [hereafter referred to as the “lease agreement”]. The second agreement was a leave and license agreement dated 07.11.2012 [hereafter referred to as the “license agreement”]. Both agreements were executed by an entity going by the name Suprem Memorial Trust [hereafter referred to as the “Trust”].

15. It is not in dispute that the lease as well as the license agreement concerns the same immovable property, which is described as D-196, Sector 51, Noida [hereafter referred to as the “subject property”].

16. Insofar as the lease rent was concerned, under the aforementioned agreement, the appellant/assessee was entitled to receive rent at the rate of Rs. 50,000/- per month. The tenure of the lease was thirty (30) years commencing from 01.04.2012.

17. Insofar as the license agreement was concerned, the consideration was pegged at 20% of the fees. This fees was to include any amount charged by way of fine, interest, development fees (if any), collections for specific purposes, contributions to pupil's fund, and other types of charges and receipts. The tenure of the license agreement was also thirty (30) years.

18. What is noticeable on perusal of both, the order passed by the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] dated 08.05.2019 and the impugned order passed by the Tribunal that the scope, ambit, and impact of the two agreements has not been discussed.

19. It is the appellant/assessee’s case that the license fee received is its business income and, therefore, expenses incurred towards earning the said income were rightly debited in the profit and loss account.



20. The AO, however, came to a different conclusion; a conclusion which was sustained both by CIT(A) as well as the Tribunal.

21. Mr Sunil Agarwal, learned senior standing counsel, who appears on behalf of respondent/revenue, says that the appellant/assessee has artificially bifurcated the income and that a close perusal of the documents would establish this fact.

22. Having said so, Mr Agarwal cannot but accept that there is no discussion concerning either the terms of the lease agreement or the license agreement by the CIT(A) or the Tribunal.

23. Ms Kavita Jha, learned counsel, who appears on behalf of the appellant/assessee, says that, apart from the agreement, there are several other pieces of evidence that were placed before the Tribunal after obtaining appropriate orders of the Tribunal, to establish day-to-day participation in the management of the school which was being run by the Trust. In this regard, Ms Jha makes a specific reference to Annexure-H (colly) appended to the appeal.

24. Presently, we have nothing on record to suggest that the documents which were marked as Annexure-H (Colly) were formally entertained by the Tribunal.

25. Even if we were to ignore the material which is made available to us as Annexure-H (colly), we are of the view that the CIT(A) and the Tribunal should have, the very least, discussed the scope and ambit of the two agreements referred hereinabove.

26. Since that exercise has not been undertaken, we are inclined to allow the appeal and remand the matter to the Tribunal, which is the final fact-finding authority for a *de novo* exercise. It is ordered accordingly.



27. The question of law is answered in favour of the appellant/assessee and against the respondent/revenue for statistical purposes.
28. We make it clear that the remand direction that we have issued will not impact the final outcome of the appeal before the Tribunal.
29. The appeal is accordingly closed.

RAJIV SHAKDHER
JUDGE

GIRISH KATHPALIA
JUDGE

AUGUST 22, 2023/RV

Click here to check corrigendum, if any