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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 23.03.2023.

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ITA 153/2022

PR. COMMISSIONER OF INCOME TAX-1 Appellant

Through: Mr Sanjay Kumar, Sr. Standing
Counsel.

versus

M/S ALCATEL LUCENT INDIA LTD. Respondent

Through: Mr Deepak Chopra, Adv.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

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

RAJIV SHAKDHER, J.: (ORAL)

1. This is an appeal directed against order dated 21.01.2020 passed by the Income Tax Appellate Tribunal [in short, "the Tribunal"].

2. According to the counsel for the parties, the only question of law, if at all, which can arise for consideration is that which is set forth hereafter:

Whether the Tribunal has misdirected itself on facts and in law in deleting additions made by the Assessing Officer (AO) in exercise of powers under Section 147/143(3) of the Income Tax Act, 1961 [in short, "the Act"] concerning the loss on sale of fixed assets amounting to Rs.2,45,35,280/-?

3. Accordingly, the aforesaid question of law is admitted for consideration.

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

4.1 Counsel for the parties say that the record which is presently available with the court will suffice for the disposal of the appeal.

5. The record shows that *qua* the AY 2005-06, the respondent/assessee had filed return on 28.10.2005. In the return filed, the respondent/assessee had declared a loss of Rs.41,72,99,430/-.

6. The respondent/assessee was subjected to scrutiny and accordingly, an order under Section 143(3) of the Act was framed on 15.12.2008.

6.1 The assessed income of the petitioner was pegged at Rs.40,29,18,340/-.

7. The record shows that on 27.03.2012, a notice under Section 148 of the Act was issued to the petitioner, requiring it to file a return for the aforementioned AY.

7.1 In response thereto, on 03.04.2012, respondent/assessee intimated the AO that the return already filed under Section 139(1) of the Act could be treated as a return in compliance with the notice under Section 148 of the Act.

8. It is not in dispute that *via* the very same communication, the petitioner had also requested the AO to furnish the reasons for triggering reassessment proceedings. Evidently, the reasons for triggering reassessment proceedings were provided to the respondent/assessee. For the disposal of this case, it is relevant to set out the reasons which were recorded by the AO and furnished to the respondent/assessee:

"2. The reasons recorded before the issue of notice under section 148 are reproduced as under:

"The scrutiny assessment of M/s Alcatel South Asia Ltd. for the assessment year 2005-06 was completed in December, 2008 at a loss of Rs. 40,29,18,340/- On perusal of the record it was

observed that as per P&L account, the assessee had claimed and was allowed the following deductions:

i) Deduction of Rs. 1,22,67,6401/- on account of loss on sale of fixed assets. This item being capital in nature was required to be added back to the income of the assessee. However, instead of adding back to the .business income of the assessee, this amount was reduced from the total income in the computation sheet. Hence, the omission resulted in underassessment of income by Rs. 2,45,35,2801/-.

ii) Deduction of Rs. 2,81,48,0001/- on account of foreign exchange loss. As per notes to the financial statement monetary foreign currency assets and liabilities are translated into rupees at the rates of exchange prevailing on the balance sheet date. As these losses are not based on actual remittance but merely restatement of assets and liabilities were required to be disallowed and added back to the income of the assessee.

Since, the assessee failed to disclose fully and truly all material facts necessary for his assessment for the AY 2005-06. Therefore, an income of Rs. 5,26,83,280/- chargeable to tax has escaped assessment for the A.Y. 2005-06.

In view of the above, I have reasons to believe that an income of Rs. 5,26,83,2801/- has escaped assessment for the A.Y. 2005-06.”

9. The respondent/assessee, in response to the reasons furnished, filed its objections on 14.01.2013. These objections were disposed of by the AO on 15.02.2013, whereupon a show cause notice was issued, calling upon the respondent/assessee to explain why addition as proposed ought not to be made. Thereupon, the AO proceeded to pass the impugned assessment order dated 15.03.2013.

9.1 Insofar as the issue at hand is concerned, in the first appeal preferred by the respondent/assessee with the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”], the respondent/assessee was not successful.

9.2 The CIT(A), on this aspect, confirmed the finding of the AO.

9.3 Aggrieved by the decision of the CIT(A), the respondent/assessee carried the matter in appeal to the Tribunal.

10. As is evident, the Tribunal ruled in favour of the respondent/assessee.

11. We have heard learned counsel for the parties.

11.1 Mr Sanjay Kumar, learned senior standing counsel who appears on behalf of the appellant/revenue, says that the impugned order which has been passed by the Tribunal cannot be sustained. According to Mr Kumar, the error in allowing the claim in the first round by the AO, on account of loss on sale of fixed assets, was pointed out by the auditor, pursuant to which, the respondent/assessee agreed to the addition being made.

11.2 In sum, it is Mr Kumar's contention that new information came to the notice of the AO, which resulted in course correction in the reassessment proceedings.

12. On the other hand, Mr Deepak Chopra, learned counsel who appears on behalf of the respondent/assessee, does not dispute the fact that the respondent/assessee had indicated that the loss on sale of fixed assets could be added to the returned income. However, Mr Chopra says that this by itself could not confer jurisdiction on the AO, as in the reasons furnished to the respondent/assessee, there is no reference to any audit objection.

12.1 In other words, it was Mr Chopra's contention that reassessment proceedings were triggered based on the information/material already available on record to the AO.

13. Although, for the sake of brevity, we are not once again setting forth the reasons furnished to the petitioner by the AO, as they are already extracted in paragraph 8 above, they are an important parameter for testing the tenability of the impugned order.

14. On a careful perusal of the reasons, it appears that there is no reference to an audit objection, or to any other objection for that matter.

Therefore, insofar as the AO is concerned, the trigger was the information which was already available on record. The respondent/assessee had debited, as it appears, the loss on sale of fixed assets in its Profit and Loss account, and this was an aspect which the AO seems to have noticed after the scrutiny assessment was framed.

15. The moot question is: whether the AO could have commenced the reassessment proceedings based on the information already available on record. It is well-established that reassessment proceedings can be based on new material, and not material information which is already on record.

16. The respondent/assessee in this case had disclosed primary facts.

16.1 The AO, decidedly, committed an error in appreciating the information that was already available on record.

17. To our minds, the power available to the AO under Section 147 of the Act does not go so far as to correct errors in appreciating the primary facts, which are disclosed by the respondent/assessee. Insofar as Mr Kumar's submission is concerned, that the respondent/assessee had agreed to the addition with regard to the deduction *qua* loss on sale of fixed of assets wrongly claimed by it, we can only say that once we hold that the error was impregnated with jurisdictional flaw, no amount of concession can help the cause of the appellant/revenue.

17.1 Given this position, our answer to the question of law, as framed, is against the appellant/revenue and in favour of the respondent/assessee.

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

19. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 23, 2023/r

Click here to check corrigendum, if any

