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

% *Decision delivered on: 13.12.2023*

+ **ITA 749/2023 & CM No.64358/2023**

PRINCIPAL COMMISSIONER OF INCOME TAX 1..... Appellant

Through: Mr Prashant Meharchandani, Sr
Standing Counsel with Mr Akshat
Singh, Standing Counsel.

versus

ANAND DIVINE DEVELOPERS PRIVATE LIMITED. Respondent

Through: None.

+ **ITA 759/2023 & CM No.64487/2023**

PRINCIPAL COMMISSIONER OF INCOME TAX 1..... Appellant

Through: Mr Prashant Meharchandani, Sr
Standing Counsel with Mr Akshat
Singh, Standing Counsel.

versus

ANAND DIVINE DEVELOPERS PRIVATE LIMITED. Respondent

Through: None.

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. These appeals concern Assessment Year (AY) 2014-15 [ITA No.749/2023] and AY 2013-14 [ITA No.759/2023].

1.1 *Via* the instant appeals, the appellant/revenue seeks to assail the order dated 24.11.2022 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

2. The Tribunal, while disposing of the appeals preferred by the



appellant/revenue, concerning the aforementioned AYs, considered the facts obtaining in AY 2013-14 as the issue was common. We intend to do the same.

2.1 Before we proceed further, we would like to place on record the fact that, even according to the appellant/revenue, there is a delay of 187 days in filing the appeals.

3. We have examined the applications for condonation of delay preferred in the above-captioned appeals. Admittedly, the certified copy of the order of the Tribunal was received by the appellant/revenue on 04.01.2023. The application for condonation of delay states that the appellant/revenue followed procedure and yet was unable to file the appeal in time. It is claimed that the delay was unintended and that the appellant/revenue made “earnest efforts” to expedite the institution of the appeal. The reasons given for the delay are that the appeal had to be processed by various officials and that several compliances had to be made before filing the appeal.

3.1 Furthermore, several precedents have been cited in support of the plea for condonation. The cases cited reiterate the applicability of the ‘sufficient cause’ test provided for in Section 5 of the Limitation Act, 1963.

4. It is clear from a perusal of the contents of the application that the reasons cited do not furnish sufficient cause. The reasons given, i.e., “processing through official hierarchy” and “compliance-fulfillment”, in themselves, appear vague. This alone should have been enough to dismiss the appeals.

5. However, since Mr Prashant Meharchandani, learned senior standing counsel, who appears on behalf of the appellant/revenue, vehemently argues



that both the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] and the Tribunal failed to appreciate that the respondent/assessee did not discharge its onus in proving that ATS Infrastructure Ltd. [in short, “ATS”] did, indeed, render services to it, we are inclined to hear the appeals on merits.

6. Briefly, the moot point that arose for consideration before the Tribunal was whether the management fees paid by the respondent/assessee to ATS should have been added back to the income of the respondent/assessee.

7. In AY 2013-14, the respondent/assessee had filed its Return of Income (ROI) on 28.11.2013. The ROI declared a ‘loss’ amounting to Rs. 3,12,21,967/-.

7.1 The record discloses that the case of the respondent/assessee was selected for scrutiny, and accordingly, notices were issued under Sections 143(2) and 142(1) of the Income-tax Act, 1961 [in short, “Act”]. During the assessment proceedings, the Assessing Officer (AO) noted that the respondent/assessee had paid management fees to ATS. The amount paid was Rs. 3,37,08,000/-.

7.2 Post-scrutiny, the AO disallowed the expenses concerning management fees paid to ATS as being ‘excessive’ and ‘unreasonable’. This amount was then added to the income of the respondent/assessee.

8. Being aggrieved by the addition, the respondent/assessee preferred an appeal before the CIT(A). The CIT(A), *via* order dated 25.04.2017, deleted the disallowance made by the AO.

8.1 The appellant/revenue, being dissatisfied, preferred an appeal with the Tribunal. This resulted in the passing of the impugned order, dated



24.11.2022, for AYs 2013-14, and 2014-15, as noted hereinabove.

9. Having perused the record and heard Mr Meharchandani's submission, we are of the view that the onus laid on the respondent/assessee was indeed discharged.

9.1 This is evident on a perusal of the following extract of the order passed by the CIT(A) in ITA No. 759/2023:

“As regards the documentary evidence to support the provision of actual services rendered by ATS to the appellant company, the appellant submitted that the Assessing Officer grossly erred in holding that no such documentary evidence was filed by the appellant company. The appellant has drawn my attention to the replies furnished during the course of the assessment proceedings, more specifically the letter dated 25th Feb, 2016 and March 8, 2016 to canvas that substantial documents were produced before the Assessing Officer during the course of assessment proceedings. The appellant placed following documents in the paper book to support its contention:

- a) Copy of MOU with ATS.*
- b) Copy of acknowledgment of ITR of ATS*
- c) Copy of confirmation from ATS.*
- d) Copy of Invoices of consultancy charges*
- e) Details of the project.*

xxx

xxx

xxx

*I have considered the submission of the appellant, observation of the assessing officer in the assessment order and various case laws relied upon by the appellant in this regard. **It is seen that Assessing Officer has not appreciated the services provided by ATS to the appellant by way of a service agreement. The Assessing Officer has not brought any information/evidence on record which has driven him to take an adverse view during the year. ...**”*

[Emphasis is ours]

10. Having regard to the finding of fact returned by CIT(A), and sustained by the Tribunal, we are of the view that no interference is called for with the impugned order since no perversity has been pointed out in the order passed by the CIT(A).



12. We have also queried Mr Meharchandani as to whether the AO found fault with the documents furnished by the respondent/assessee in support of the plea that ATS did furnish services to the respondent/assessee.

12.1 Mr Meharchandani was not able to answer this question. Notwithstanding the above, there is no doubt that, given the material placed on record, the onus cast on the respondent/assessee was, in fact, discharged.

13. Insofar as AY 2014-15 is concerned, the facts are *pari materia*. The only difference is that the amount disallowed was higher, i.e., Rs. 6,74,16,000/-.

14. We may also note that, insofar as AY 2014-15 is concerned, the CIT(A) has recorded the following material facts:

“As regards the documentary evidence to support the provision of actual services rendered by ATS to the appellant company, the appellant submitted that the Assessing Officer grossly erred in holding that no such documentary evidence was filed by the appellant company. The appellant has drawn my attention to the replies furnished during the course of the assessment proceedings, more specifically the letter dated Nov 8, 2016, Dec 2, 2016 and March 14, 2016 to canvas that substantial documents were produced before the Assessing Officer during the course of assessment proceedings. The appellant placed following documents in the paper book to support its contention:

- a) Copy of certificate of services rendered by ATS*
- b) Copy of minutes of meetings between appellant and ATS*
- c) Copy of registration in Service Tax*
- d) Copy of registration in VAT*
- e) Copy of salary sheet of staff deputed by ATS*
- f) Copy of registration and approvals for construction*
- g) Copy of MOU with ATS.*
- h) Details of the project*
- i) Copy of Invoices raised by ATS to other parties to whom it provided similar management services.*

xxx

xxx

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*I have considered the submission of the appellant, observation of the assessing officer in the assessment order and various case laws relied upon by the appellant in this regard. **It is seen that Assessing Officer has not appreciated the services provided by ATS to the appellant by way of a***



service agreement. The Assessing Officer has not brought any information/evidence on record which has driven him to take an adverse view during the year. ...”

[Emphasis is ours]

15. The factual findings returned by the CIT(A) in both AYs are, evidently, based on the documentary evidence placed on record.

16. In our opinion, no substantial question of law arises for our consideration. Accordingly, the appeals are disposed of in the aforesaid terms, albeit on merits.

17. Given this position, the condonation of delay applications filed by the appellant/revenue are rendered inefficacious and are, consequently, closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

DECEMBER 13, 2023

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