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

\+ ITA 139/2018

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)-1 .....Appellant

Through: Mr. Puneet Rai, SSC with Mr. Ashvini Kumar and Mr. Rishabh Nangia, JSC with Mr. Nikhil Jain, Adv.

versus

SAHARA INDIA MASS COMMUNICATION.....Respondent

Through: Mr. Percy J. Pardiwalla, Sr. Adv. with Mr. Satyen Sethi, Mr. Artatrana Panda and Mr. Sanjeev Kr. Gupta, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

<u>O R D E R</u>

% 02.08.2024

1. The Principal Commissioner calls in question the judgment handed out by the Tribunal dated 18 August 2017 and posits following questions of law for our consideration:

> "A. Whether on facts and in the circumstances of the case Ld. ITAT was correct in law in deleting the addition of Rs.1,45,84,380/- made by AO on account of Employers' and Employees' contribution to Provident Fund?
> B. Whether on facts and in the circumstances of the case Ld. ITAT was correct in law in deleting the addition of Rs.5,10,78,366/- made by AO on account of Advertisement Expenses?"

2. The first question was addressed in light of the stand of the appellants that Sahara India Employees Contributory Provident Fund

Trust was not a recognized fund of M/s. Sahara India Mass Communication, the respondent/assessee herein.

3. Pursuant to our order dated 25 January 2023, we had accorded liberty to the respondent/assessee to place additional documents on our record. Based on the aforesaid liberty so granted and from the documents tendered on 11 September 2023, we find on our record a notification dated 12 June 2006 and which reads as under:

> "New Delhi, the 12th June, 2006
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> **S.O. 2444** - Whereas M/s. Sahara India and its four Companies namely, Sahara India Financial Corp. Ltd. Sahara India Mass Communication, Sahara India Commercial Corp. Ltd., Sahara Airlines Lid. (hereinafter referred to as the said establishment) has applied for exemption under clause (a) of Sub-section (l) of Section 17 of the, Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) (hereinafter referred to as the said Act).
>
> And whereas in the opinion of the Central Government the rules of the Provident Fund of the said establishment with respect to the rates of contribution are not less favourable to employees therein than those specified in section 6 of the said Act and the employees are also in enjoyment of other provident fund benefits provided under the said Act or under the Employees Provident Fund Scheme, 1952 (hereinafter referred to as the said scheme) in relation to the employees in any other establishment of similar character.
>
> Now, therefore, in exercise of the powers conferred by clause (a) of Sub-section (1) of Section 17 of the said Act and subject to the conditions specified in this regard from time to time, the Central Government, hereby, exempts the said establishment from the operation of all the provisions of the said Scheme with effect from1-4-1994, until further notification.
>
> [No. S-35015/10/2006-SS-II]
> K.C.JAIN, Director"

4. It is thus apparent that the scheme formulated by Sahara India Mass Communication came to be accorded exemption in terms of Section 17(1)(a) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ['**EPF&MP**'] with retrospective

effect from 01 April 1994. In view of the aforesaid and notwithstanding the findings which stand recorded in this respect in the order of the Tribunal, we find that the challenge so raised would not merit any further consideration.

5. That only leaves question (b) and which pertained to advertisement expenses. We find that while dealing with this aspect the Tribunal has observed as follows:

> **<u>“GROUND NO. 8</u>**
> 20. Ld. CIT (A) deleted the addition of Rs.5,10,78,366/- made by the AO on account of advertisement expenses by following order passed by the Id. CIT (A) in assessee's own case for AYs 2005-06 and 1996-97 by following the rule of consistency. This settled position of rule of consistency applied by the Revenue authorities in assessee's case qua advertisement expenses has not been controverted by the Id. DR. Hence, we find no illegality or perversity in the findings returned by Id. CIT (A) and consequently, ground no.8 is determined against the Revenue.”

6. We are informed by Mr. Rai, learned counsel, that the Department aggrieved by the view expressed by Commissioner of Income Tax (Appeals) [‘**CIT(A)**’] for Assessment Year [‘**AY**’] 2005-06 in respect of the assessee has preferred an appeal which is pending consideration before the Tribunal itself.

7. In view of the above, we are of the considered opinion that the Tribunal has clearly erred in proceedings to affirm the findings returned by the CIT(A). Quite apart from what has been stated by Mr. Rai, we find that the Tribunal has also failed to record any reasons in support of its affirmation of the view expressed by the CIT(A).

8. We, consequently, allow the instant appeal in part and set aside the findings of the Tribunal pertaining to Ground no. 8. The appeal of the Revenue in that respect shall stand revived before the board of the concerned Tribunal to be considered and decided afresh. All rights

and contentions of respective parties on merits are kept open.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

AUGUST 2, 2024
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