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

\+ ITA 458/2019

PR. COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr. Sanjay Kumar, Ms. Easha and Ms. Hemlata Rawat, Advs.

Versus

ASIAN CONSOLIDATED ..... Respondent

Through: Mr. Ved Jain, Mr. Nischay Kantoor and Ms. Soniya Dodeja, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% 09.04.2024

1. Pursuant to the last order passed, Mr. Kumar has placed the following revised and amended questions of law for our consideration:

> "A. Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal ["**ITAT**"] was correct in law in holding that additions made original assessment order cannot be repeated/adopted in denovo assessment order pursuant upon the setting aside of assessment order under Section 263 of the Income Tax Act, 1961 ["**Act**"]?
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> B. Whether in the facts and circumstances of the case, the ITAT erred in law in not appreciating that the Assessing Officer ["**AO**"] in the set aside proceedings had referred to the original assessment order dated 30.03.1994 for the sake of brevity to make additions in the subsequent set aside assessment proceedings on issues which were not subject matter of revision under Section 263 of the Act?
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> C. Whether in the facts and circumstances of the case, the ITAT erred in law in not appreciating that the setting aside of assessment order under Section 263 of the Act does not take away the status of the said assessment order to be material on record and reference

thereof can be made in any subsequent and valid assessment proceedings?

D. Whether in the facts and circumstances of the case, the ITAT erred in law in deleting the addition of Rs.42.83 lakhs made by AO on account of inflated purchases disregarding detailed observation of the AO and Commissioner of Income Tax (Appeals) ["CIT(A)"]?

2. The dispute emanates in the backdrop of the following facts. For Assessment Year 1991-92, the assessee had furnished a Return of Income on 31 December 1991 declaring Nil income. A revised Return of Income is thereafter stated to have been submitted on 23 March 1992 declaring a loss of INR 99,66,000/-. Assessment was completed on 30 March 1994 and in terms of which the AO upon making various additions totaling INR 1,99,80,657/-, assessed the respondent to tax and also disallowed brought forward losses from the previous years.

3. It was this original order of assessment which came to be set aside by the CIT (Central)-I, New Delhi in exercise of powers conferred by Section 263 of the Act *vide* order of 02 March 1995.

4. Upon the matter landing on the board of the AO pursuant to the aforesaid order of remit, the AO computed and completed the assessment in the following terms:

"*Income assessed as per original order dated 30.03.94 u/s 143(3)*	*1,99,80,657/-*
Add	
On account of inflation of purchase (as discussed)	42,83,000/-
Total income	2,42,63,657/-

Assessed. Issue necessary forms. Penalty proceedings *u/s* 271(1)(c) *are initiated separately*. *Penalty proceedings u/s* 269-T to be initiated separately."

5. It is the action of the AO in merely replicating and reiterating the income as assessed in the earlier order of assessment dated 30

March 1994 which has been found to be unsustainable by the ITAT.

6. Having gone through the subsequent order dated 31 March 1997, we find that the AO has recorded no reasons in support of assessing the respondent on a total income of INR 1,99,80,657/-. As is ex facie evident from a reading of the assessment order, it has chosen to merely reiterate the income as assessed in terms of the original order dated 30 March 1994. Bearing in mind the aforesaid undisputed fact, we find no justification to interfere with the view as taken by the ITAT.

7. That only leaves us to deal with the issue which stands encapsulated in proposed question D and pertains to the deletion of an addition of INR 42.83 lakhs. We note that while dealing with the aforesaid aspect, the ITAT has held as follows:

> "16.1. In the present case, the A.O. examined the issue of sales and purchases and found that sales of Rs.3.53 crores have been made to M/s. V.T.R Container (P) Ltd., which is unverifiable. Similarly, purchases to the extent of Rs.2.29 crores have been booked in the name of sister concern M/s. Trans-Asia Packaging Ltd., which, according to A.O. remain unverifiable. The assessee-company filed several documentary evidences on record to show that sales and purchases are genuine. The Ld. CIT(A) in A.Y. 1992-1993 vide Order dated 09.11.2015 (supra) found existence of M/s. V.T.R. Container (P) Ltd., as genuine and addition have been deleted. In the present case, the A.O. even do not make any addition on account of bogus sales. The profit on the sales have been assessed to tax. The A.O. simply noted that purchases are made through various sister concerns, therefore, it was inflated purchases. However, the A.O. did not dispute the genuineness of the documentary evidences filed by assessee- company on record to prove genuineness of the purchases. The A.O. merely made part addition of Rs.42.83 lakhs for inflated purchases. Meaning thereby, A.O. accepted the existence of M/s. Trans-Asia Packaging Ltd., and substantial genuine purchases made by assessee-company from this party. The sole reason given by the A.O. was that purchases have been made through various parties originated from M/s. V.T.R. Container (P) Ltd., However, it appears that no inquiry have been made from any of the intermediary party for making the sales to the assessee-company. The A.O. forgot to note that when

he taxed the income on sales, he should believe that sales could not be made without any purchases. Since the A.O. did not dispute the existence of M/s. Trans-Asia Packaging Ltd., and that substantial purchases have been made from this party have not been disputed by the A.O, therefore, on account of no inquiry made from the concerned parties or on the documentary evidences filed by assessee- company, no addition could be made against the assessee- company. We, accordingly, set aside the Orders of the authorities below and delete the addition of Rs.42,83,000/-. Ground No.6 of appeal of assessee-company is allowed."

8. Having perused the findings so returned, we find that the same raises no substantial question of law.

9. Consequently, the appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 9, 2024/p