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

\+ ITA 194/2022

PR. COMMISSIONER OF INCOME TAX- 1 .....Appellant

Through: Mr. Siddhartha Sinha, SSC with Ms. Dacchita Shahi and Ms. Anuja Pethia, JSCs.

versus

M/S CLC & SONS PVT. LTD. .....Respondent

Through: Mr. Abhinav Jain, Adv.

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

O R D E R

% **10.09.2024**

1. The Principal Commissioner of Income Tax impugns the order of the **Income Tax Appellate Tribunal**[1] dated 28 May 2019 and posits the following questions of law for our consideration:-

> "a) Whether the Hon'ble ITAT has erred both on facts and in law in directing the AO to delete the foreign travel expenditure's disallowance, despite the Assessee's failure to establish the business purpose of these tours or to establish the benefit derived from these tours to the business?
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> b) Whether the Hon'ble ITAT has erred both on facts and in law, in directing the AO to grant depreciation on goodwill to the Assessee, despite the AO categorically pointing out the flaws in the valuation of goodwill done by the valuer?
>
> c) Whether the Hon'ble ITAT has erred both on facts and in law in directing the AO to grant depreciation on goodwill to the Assessee despite the fact that there was no transfer of goodwill involved, in the real sense?"

[1] Tribunal

2. We note that insofar as the aspect of valuation of goodwill is concerned, the Tribunal has in paragraph 10 rendered the following findings:-

> "10. Learned CIT DR also argued that valuation report has a disclaimer stating that valuation has been prepared on basis of information and data supplied by management of group and same is believed to be reliable by valuer. It is further mentioned that scope of work does not include verification of data submitted by management but are relied upon by valuer. He further referred to valuation report and stated that information contained therein is based on certain assumptions and managements analysis of information available at time of report which was prepared by auditor. Therefore relying upon decision of coordinate bench in 171 ITD 74, he submitted that such valuation report deserves to be rejected. We have given careful thought to argument made and found that in judicial precedent cited before us, sole reason for reason for rejection was that there was a long disclaimer made by merchant banker, who did not do anything reflecting expert eyes except merely applying formula on data provided by assessee. Therefore, coordinate bench was of view that it is not possible to brush aside contention of revenue that possibility of tailoring data by applying reverse engineering to predetermined conclusions. In present case, we have perused valuation report prepared by auditor which is placed at page number 14 - 31 of paper book. No doubt chartered accountant has given a notice to reader stating scope of assignment. He mentioned that information contained in valuation report is based 'on' certain assumption and management's analysis of information available at time of report and does not give any representation, warranty or other assurance in relation to valuation report. However, valuation report gives a detailed analysis of factors a<u>ffecting determination of goodwill, factors contributing to goodwill, and justification for various assumptions made therein. Detailed calculation of goodwill has also been made based on various agency agreement and past history of business of firm which was acquired. Valuation report after giving justification for various workings was also supported by several judicial precedents. Further at page number 15 of valuation report it has been specifically mentioned that management of company has vetted projections. Further projection made by valuer were also not found to be vague but were near to reality, as average profit assumed by valuer was far less than actual profit in subsequent years earned by business. Further we must understand that each professional will do his duty according to norms prescribed by regulatory authority of that professional. Many times such regulatory authorities also prescribe certain disclaimers required to be given in such expert opinions. But when disclaimer is given, it cannot always be stated that such an expert opinion is not reliable.</u> To prove that various

assumption and presumptions are unreliable, revenue must bring on record credible evidences. It must prove that such assumptions were not at all valid and subsequent financial results also supports that assumptions are wayward. In absence of this, opinion of an expert cannot be brushed aside. In present case subsequent financial performances were far more exceedingly well then performance projected by valuer. In view of this there is a vast difference between facts of case cited before us and facts of case decided by us."

3. It was on the aforesaid basis and the material existing on the record that it ultimately came to hold that the findings of the lower authorities in that respect was liable to be reversed.

4. Although it had been urged before us on the last occasion that the concept of depreciation would not be applicable to goodwill, we take note of the following succinct observations as rendered by the Supreme Court in **Commissioner of Income Tax, Kolkata v. SMIFS Securities Limited**[2].

> "**8.** We quote hereinbelow Explanation 3 to Section 32(1) of the Act:
>
> > "Explanation 3.— For the purposes of this sub-section, the expressions 'assets' and 'block of assets' shall mean—
> > (a) tangible assets, being buildings, machinery, plant, or furniture
> > (b) intangible assets, being know- how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature."
>
> Explanation 3 states that the expression "asset" shall mean an intangible asset, being know-how, patents, copyrights, trademarks, licences, franchises or any other business or commercial rights of similar nature. <u>A reading of the words "any other business or commercial rights of similar nature" in clause (b) of Explanation 3 indicates that goodwill would fall under the expression "any other business or commercial rights of similar nature." The principle of ejusdem generis would strictly apply while interpreting the said expression which finds place in Explanation 3(*b*).</u>"

5. That only leaves us to deal with the question pertaining to foreign travel expenditure. While dealing with this aspect, the

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[2] (2012) 13 SCC 488

Tribunal has held as under:-

> "17. The 3rd disallowances of INR 1784212/- out of the foreign travel expenditure. During the year the directors of the assessee company undertook foreign travel to develop the export commission business in overseas countries the learned assessing officer disallowed the entire foreign travel expenditure stating that since the assessee companies not engaged in export of any goods or articles neither it is procured any export order on commission basis, tours were undertaken by the directors of foreign countries are on personal account having no business connection. The learned CIT-A also upheld the above disallowance. The assessee submitted that assessee intends to do export sale on commission basis and the foreign travel expenditure has been incurred by the assessee for the same business. It was also supported by the details of export commission earned by the assessee on account of foreign business from one of the client. Therefore it was stated that these foreign travel expenditure are for the purposes of the business. Learned departmental representative supported the orders of the lower authorities. On careful analysis of the various evidences placed by the assessee in the paper book at page number 179-294 of the paper book it is apparent that the assessee has incurred the foreign travel expenditure supported by all the details. The assessee has also demonstrated that it has earned the commission income on account of export from one of the clients of the assessee. It is also apparent that export on commission has also shown upward trend. In view of this we do not find any reason to uphold the orders of the lower authorities. Accordingly expenditure incurred on foreign travel by the assessee is an expenditure wholly and exclusively incurred by the assessee for the purposes of the business. Even otherwise the assessee is a company and it cannot have any personal expenditure. Accordingly we direct the learned AO to delete the above disallowance."

6. Since those findings are not shown to suffer from any patent illegality or be liable to be described as perverse, we find no justification to interfere with the view as expressed.

7. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

SEPTEMBER 10, 2024/RW