$~19

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

\+ ITA 572/2019

PR. COMMISSIONER OF INCOME TAX-7 .....Appellant

Through: Mr Aseem Chawla, Sr. Standing Counsel with Ms Pratishtha Choudhary, and Mr Naveen Rohila, Advs.

Versus

M/S PRABHATAM ADVERTISING PVT LTD. .....Respondents

Through: Mr. Gautam Jain, Mr. Manish Yadav, Advs.

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

O R D E R

% **09.07.2024**

1. The Principal Commissioner impugns the order of the Income Tax Appellate Tribunal [“**Tribunal**”] dated 19 December 2018 and proposes the following questions of law for our consideration: -

> “3.1 WHETHER in the facts and circumstances of the case, the Ld. ITAT erred in deleting addition of Rs. 1,20,56,085/- made by AO on account of sale of shares despite the fact that no confirmatory evidences were filed by the assessee to show that sales in respect of shares have been properly and accurately accounted for.
>
> 3.2 WHETHER in the facts and in the circumstances of the case, the Ld. ITAT erred in deleting disallowance of Rs. 1,29,91,587/- of Write Off with respect to construction cost of Bus Stops as revenue expenditure despite the fact that the expenditure on construction on the Bus Shelters gave enduring benefits to the assessee for a period of 5 years?
>
> 3.3 WHETHER in the facts and circumstances of the case, the Ld. ITAT erred in deleting addition of Rs. 27,297/- on account of late

charges of Service Tax ignoring that the charges were for late filing of returns are in nature of fine for violating the law and same being not allowable expenditure under the law the law?

3.4 WHETHER in the facts and circumstances of the case, the Ld. ITAT erred deleting the disallowance of Rs. 28,94,472/- on account of proportionate interest expenses on loans to relatives of director and related parties despite the fact that the assessee failed to substantiate that the loans were for business purpose whereas Ld. CIT(A) had clearly demonstrated that the loans were paid out of negative bank balance?

3.5 WHETHER in the facts and circumstances of the case, the Ld. ITAT erred in deleting disallowance of Rs.l6,65,000/- of proportionate interest expenses despite the fact that the objective of joint venture was not apparent from the agreement and the assessee failed to clear its correct position during the proceedings?

3.6 WHETHER in the facts and circumstances of the case, the Ld. ITAT erred in deleting the addition of Rs. 5,09,74,000/- on account of unexplained share application money and share capital u/s 68 of the IT Act despite the findings that neither the genuineness nor the: creditworthiness were proved?"

2. The principal issue pertained to the income derived from the sale of shares and the additions which were made by the Assessing Officer ["**AO**"]. As we go through the record placed before us, it becomes apparent that the Auditor's Note constituted the solitary basis on which the additions were made.

3. We, however, note that the Tribunal has taken into consideration the entire material as well as the accounts which were maintained by the assessee as would be evident from the following paragraphs of the judgment rendered: -

"6. Before the ld. CIT (A), the assessee submitted that the sale value of these shares have been duly declared in the Profit and Loss account by the assessee company and also demonstrated this fact by way of various evidences in the form of profit and loss account, i.e., trial balance; client-wise details of sale of shares including stock summary of opening stock and sale summary; audited P& L account in balance sheet. Apart from that assessee has also filed following details which were in the form of additional evidences.

a. Detail of Bill outward/ sale account head

b. The order of Mediation Centre

c. Copy of agreement for settlement dated 12.05.2008

d. Ledger Account of AG Shares and Securities Ltd.

e. Copy of Profit and Loss Account.

f. Quantity wise detail of sale of shares along with copy of ledger account of sale of shares and set of audited balance sheets.

6.1 Ld. CIT (A) confirmed the action of the Assessing Officer on the ground that assessee has not filed any confirmation in this regard or Demat account or the bank statement. The assessee even failed to file broker's contract note and mode of payment of the sale.

7. Before us the ld. counsel for the assessee, Mr. Gautam Jain after drawing our attention to the various documents filed before the authorities below submitted that the total credit on account of sale of shares was Rs.75,71,95,345/-; and the head wise break up as placed in the paper book were as under:

Sr. No.	Particulars of sales account	Amount (Rs.)
1	BILL Outward 1	10,63,00,203.07
2	Bill outward-10%	51,56,001.20
3	Bill outward 10% (Other than Channel)	1,05,56,423.04
4	Bill Outward 12%	1,65,23,566.77
5	Bill Outward (12%) Other Than Channel	2,34,66,498.33
6	Bill Outward 1.8%	28,13,47,797.12
7	Bill Outward BBY	1,63,52,171.94
8	Bill Outward Bby 1.8	7,49,98,083.51
9	Production Sale	16,500.00
10	Profit on Sale of Shares	28,88,975.07
11	Sales CST 2% (Against Form-C)	7,14,480.00
12	Sales of Shares - Deliveries	91,67,109.93
13	Sales Other	20,06,12,563.00
14	Sales-VAT 12.5%	73, 45,424.00
15	Sales-VAT 4%	17,49,548.00
	Total	**75,71,95,344.98**

Thus, he submitted that sum of Rs.l,20,56,085/- stands duly credited in the P&L account in the following manner:-

Sr.No.	Head	Amount (Rs.)
i)	Profit on Sale of Shares	28,88,975.07
ii)	Sales of Shares - Deliveries	91,67,109.93
	Total	**1,20,56,085**

> 7.1 He further submitted that even the auditor's note clearly states that the shares have been sold by the assessee. Thus, there is no question of any sale not being recorded in the P&L account. The dispute was with regard to the broker only and this is the reason why the auditors have given their remark."

4. It was on the aforesaid basis that it ultimately came to the following conclusion: -

> "9. We have heard the rival submissions and also perused the relevant findings given in the impugned orders as well as material referred to before us. The sole reason for making the addition by the Assessing Officer was that auditors have given a remark that payment has not been made by the company on the sale of the shares; and Demat account has not been provided for verification. From the perusal of the material placed on record and as referred to before us by the learned counsel, we find that it cannot be disputed that amount of Rs.1,20,56,085/- on account of sale of shares have been duly reflected in the P&L account which is fairly evident from the break up given by the learned counsel as incorporated above. The profit on the sale of shares amounting to Rs.28,88,975/- had already been discloses in the accounts. Even from the bare perusal of the auditor's note, it is seen that the amount has been shown by the assessee from sale of shares *albeit* it has been noted that there is some dispute against the broker for recovery of the amount. Once there is no dispute regarding sale of shares and profit on such shares duly disclosed, then to treat that the whole amount of sale separately as income of the assessee once again would be absurd. It is not the case of the Assessing Officer and ld. CIT(A) that the transaction of sale of shares is not genuine. Whence, neither the auditor has disputed the sale nor the accounts otherwise show that the sale of shares has not been reflected, then to hold that the entire sale of shares should be added would be erroneous. In any case, the assessee has filed various documents to demonstrate the sale of shares which are as under:-

No.	
1	Copy of profit and loss account of M/s Rastriya Advertising Agency
2	Copy of stock summary as on 1.4.2008
3	Quantity wise details of sale of shares (stock summary opening stock as on 01.04.2008 sale summary for the period 01.04.2008 to 31.03.2009)
4	Copy of ledger account of sales of shares-Deliveries in the books of M/s Rashtriya Advertising Agency for the period 1.4.2008 to 31.3.2009
5	Copy of ledger account of profit on sale of shares in the books of M/s Rashtriya Advertising Agency for the period 1.4.2008 to 31.3.2008
6	Group summary in the books of appellant company
7	Copy of order of mediation in case of appellant and Anuranjan Pandey
8	Copy of agreement dated 12.5.2008 between Anu Shares and Securities (P) Ltd. and Mr. Dinesh Gupta
9	Copy of ledger account of AG Shares & Securities Ltd. in the books of appellant company in the books of M/s Rashtriya Advertising Agency for the period 5.9.2007 to 31.3.2009
10	Copy of ledger account of AG Shares & Securities Ltd. in the books of appellant company for 1.4.2010 to 3.13.2013

Thus, the addition of this amount in wake of aforesaid documents can be upheld and same is directed to be deleted."

5. Insofar as question 3.4 is concerned and relates to the deletion of disallowance of INR 28,94,472/-, we find that the Tribunal has held as follows:-

"24. After hearing the rival submission and on perusal of the relevant material referred to before us, we find that assessee has given interest free advances aggregating to Rs.4,82,41,209/- to its related concerns/persons. At the outset, from the perusal of the financial statements it is quite evident that the assessee has huge surplus funds aggregating to Rs. 15.75 crore and thus, when assessee has such huge interest free surplus funds then presumption is always there that these funds must have given out of surplus funds. This proposition has been upheld by catena of judgment like, **CIT vs Bharti Televentures Ltd.,** reported in **331 ITR 502 (Del); CIT vs. Reliance Utilities and Power Ltd., 313 ITR 340 (Bom); CIT vs. HB Stock Holdings Ltd, 184 Taxman 352 (Del).** Apart from that learned counsel has brought on record that identical claim has been accepted by the Department right from Assessment Year 2010-11 to 2014-15 and no disallowance was ever made. In view of the aforesaid facts, we do not find any reason to sustain such a disallowance of notional interest and same is directed to be deleted."

6. On going through the same, we find that the appeal fails to raise any substantial question of law. The appeal consequently fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 9, 2024/neha