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

\+ ITA 302/2018

THE PR. COMMISSIONER OF INCOME TAX CENTRAL-3 .....Appellant

Through: Mr. Abhishek Maratha, SSC with Mr. Apoorv Agarwal, Mr. Parth Semwal, JSCs, Ms. Nupur Sharma, Mr. Gaurav Singh, Mr. Bhanukaran Singh Jodha, Ms. Muskaan Goel, Mr. Kamakshraj Singh & Mr. Himanshu Gaur, Advs

versus

ONEHUB (CHENNAI) PVT. LTD. .....Respondent

Through: Mr. Ruchesh Sinha, Mr. Rakesh Kumar & Ms. Monalisa Malik, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE GIRISH KATHPALIA

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

% **12.12.2024**

1. The Principal Commissioner impugns the order of the **Income Tax Appellate Tribunal**[1] dated 31 August 2017 and posits the following questions of law for our consideration:

> "2.1 Whether ld. ITAT erred in deleting the addition of Rs.40 crores made by Assessing officer on account of disallowance of expenses although the conditions envisaged under section 37(1) that only expenses incurred wholly and exclusively for the purpose of business shall be allowed as a deduction remained unsatisfied?"

2. The issue of additions made under Section 37 of the **Income Tax Act, 1961**[2] appears to have emanated in the backdrop of certain

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[1] Tribunal
[2] Act

material which was gathered in the course of a search conducted in respect of the AMR Group of Companies. According to the appellant, that material would appear to have lent credence to an allegation of bogus expenses having been claimed by the respondent-assessee and quantified at INR 40 Crores.

3. Before the Tribunal, the stand of the respondent-assessee has come to be recorded in paragraphs 6 & 7, and which are extracted hereinbelow:

> "6. We have discussed hereinabove the relevant facts of the present case on the issue as well as the submissions of the parties. The grievances of the assessee are in two-folds, firstly, the validity of addition of Rs.40 crores made by the Assessing Officer on account of bogus expenses alleged to have been claimed by the assessee, and secondly making of such addition on substantive basis in the hands of the assessee against protective basis made by the Assessing Officer. The basis of the addition made by the Assessing Officer was that during the course of search at AMR Group Company at Chennai on 3.09.2013 copies of maintenance bills showing bills for Rs.40 crores raised by AMR Group to the assessee (previously known as Apricot) for carrying out the works relating to provision of securities, leveling, fencing, removal of encroachment etc. on land carried out between October to December, 2011. Vouchers relating to expenditure of Rs.40 crores billed by AMR Group to the assessee were, however, not found. The Assessing Officer noted that statements of Shri P. Arul Mudi, Director of AMR Group Companies, inter alia, comprising of AMR Holding P. Ltd. and East Coast Consultants Pvt. Ltd. were recorded. Since vouchers or any other supporting documents were not found, the assessee was asked to furnish the same. A search was also carried out at the assessee's premises for the purpose. Statement of Shri N.B. Ganesh, Dy. General Manager (Business Development) IREO Management Pvt. Ltd. were recorded in search wherein he stated that while making various payments of Rs.16,54,50,000/- to AMR Holdings Pvt. Ltd. (AMR) and payment of Rs.26,57,50,000/- to East Coast Consultants Pvt. Ltd. (ECC) by the assessee company, the normal procedure of inspection / verification was not observed by the assessee company. The Assessing Officer noted further that neither any documentary evidence in support of the expenditure was produced nor any TDS deduction on the payment so made. The Assessing Officer noted further that issue has not been examined in the hands of AMR Holdings Pvt. Ltd. and East Coast Consultants India Ltd. to whom

the assessee had made payments on account of land development expenses, as the above companies had filed settlement applications and no search assessment orders were being passed under section 153A in respect of the above two companies. The Assessing Officer accordingly made the addition of Rs. 40 crores in the hands of the assessee on protective basis on account of bogus expenses claimed by the assessee. The ld. CIT (Appeals) has upheld the addition in the hands of the assessee on substantive basis. The ld. CIT (Appeals) held that in absence of any evidence to support the claim of the assessee, the expenditure could not be allowed under section 37 of the Act. He held that in such circumstances the submission of the assessee that since the amount had been treated as income in the hands of two recipients is not relevant. He further held that due to the failure of the assessee to prove the allowability of the expenditure debited in its books, the Assessing Officer was required to disallow the expenses irrespective of the treatment given by the other parties connected with the transactions. He accordingly finally opined that though the Assessing Officer had rightly disallowed the unproved expenditure yet in the circumstances of the case the disallowance of Rs. 40 crores had to be upheld on a substantive basis in the hands of the assessee.

7. Before us the assessee has tried to meet out the allegations / objections raised by the authorities below while making and upholding the addition in question. Regarding the non-finding of vouchers or any other supporting documents during the course of search at AMR Group and at the premises of the assessee, the submission of the assessee remained that the bills raised by AMR Group relating to the services rendered were impounded during the course of search at the premises of group company and the group head by Shri P. Arul Mudi, had on oath confirmed during the search itself of carrying out of the services of fencing, cleaning and filling, maintenance, security, removal of encroachments, road laying and other developmental activities though he could not then readily produce the relevant vouchers due to irregularities and deficiencies in the maintenance of books of accounts. He had also stated that the security of 360 acres of land in question was entrusted to the local villagers. It was further submitted that the charges as defrayed to the two Arul Mudi Group companies having already been submitted by them for assessment, the disallowance of such payments in the hands of the assessee would result in double taxation, which is not permissible in law. Copies of assessment order in the case of AMR and ECC were furnished along with submission dated 27.10.2016 before the ld. CIT (Appeals). It was further stated that the exercise undertaken to locate the relevant vouchers for the developmental work carried out by the AMR and ECC at the assessee's premises was misdirected and superfluous and for the mere fact of irregularity in the procedure of inspection / verification it cannot lead to the dubbing

of the real expenditure incurred on the job as bogus. It was submitted that at the relevant time the development of business of the assessee was at a nascent stage and the process of setting up of a technically qualified project development team was in process. It was submitted that the supporting documents with their invoices were voluminous and it was not feasible to submit the same at once."

4. Based on the stand so taken by the respondent-assessee, the Tribunal had come to observe as follows:-

> "7.1 Regarding the alleged non-deduction of tax at source (TDS) on the payment so made, the submission of the assessee remained that it was wrongly alleged that TDS had not been deducted on the payments made to the two companies and in support copies of TDS certificates made to AMR and ECC, invoices raised by them, letter of intent and confirmation certificates for work done (dated 11.03.2016) were furnished before the authorities below. It was specifically submitted that TDS had not only been deducted, but had also deposited on various dates between 20.12.2011 and 4.01.2012 in the case of AMR and between 18.10.2011 and 26.12.2011 in the case of ECC.
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> 7.2 It was also contended that the authorities below failed to realize that it was natural for the unconnected persons like Shri N.B. Ganesh, Dy. General Manager of IREO Management Pvt. Ltd. to make incorrect statement due to unfamiliarity with the relevant facts. Shri N. B. Ganesh had stated that inspection / verification of the developmental work was not carried out before making the payment to AMR Group companies. It was also wrong to say on the part of Shri N. B. Ganesh that TDS was not deducted. It was submitted that all TDS deposits had been made prior to the date of search and it was pointed out to the Assessing Officer that the developmental activity carried out by the said two companies entailed Service Tax and the same was also duly paid much before the search operations. Vide letters dated 7.02.2016, 16.03.2016 and 23.03.2016, to the authorities below the assessee had informed that due procedure was followed in approving the work completed before disbursing the payments to the two companies.
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> 7.3 Besides the contention of the assessee remained that development charges as paid to the two companies had been carried over as work-in-progress and no expenditure was claimed and the payments for the developmental charges by the assessee were from transparent and explained sources and further where the payments in question had been brought to books as income in the hands of the receipt companies, the entire exercise of the authorities below in the assessee's case was preferably erroneous, completely perverse and totally unjust.

> 7.4 We thus find that assessee has been satisfactorily and convincingly able to meet out all the objections raised by the authorities below on the basis of which they have made and upheld the addition of Rs.40 crores in the hands of the assessee on account of alleged bogus expenses claimed by the assessee. We fully concur with the contention of the ld. AR that when the two AMR Group companies had already returned for assessment the income resulting out of the receipts of the aggregate amount of above Rs.40 crores received by them from assessee for taxation, there was no reason to tax the same amount in the hands of the assessee as undisputedly it will amount to double taxation, which is not permitted under the provisions of the Income Tax Act. We thus while setting aside orders of the authorities below in this regard, direct the Assessing Officer to delete the addition of Rs.40 crores in question. The ground Nos.1 to 4 involving the issue are accordingly allowed.
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> 8. In result, appeal is allowed."

5. Quite apart from the assertions on fact which were made by the respondent, we are informed that it had never claimed the expense of INR 40 Crores. In that view of the matter, the question of addition would not arise.

6. We also bear in consideration the fact that the aggregate amount of INR 40 Crores had already been offered to tax by two of the constituent entities of the AMR Group of Companies and who had been also assessed. In view of the aforesaid, we find that the appeal fails to raise any substantial question of law.

7. It shall, consequently, stand dismissed.

YASHWANT VARMA, J

GIRISH KATHPALIA, J

DECEMBER 12, 2024/kk