$~70

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

\+ ITA 361/2024

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2 .....Appellant

Through: Mr. Sanjay Kumar, SSC with Ms. Easha Kadian, Adv.

versus

M/S EXPERION HOSPITALITY PVT. LTD. .....Respondent

Through: Mr. Salil Kapoor, Ms. Ananya Kapoor & Mr. Sumit Lalchandani, Advs.

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

O R D E R

% 19.07.2024

CM APPL. 40223/2024 (120 days delay in re-filing)

Bearing in mind the disclosures made, the delay of 120 days in refilling the appeal is condoned.

Application stands disposed of.

ITA 361/2024

1. The Commissioner impugns the order of the Income Tax Appellate Tribunal ["**Tribunal**"] dated 20 September 2023 and has posed the following questions of law for our consideration:

> "A. Whether in law and in the circumstances of the case, the Ld. ITAT has erred in law in dismissing the appeal filed by the revenue by concluding that the grounds raised by the revenue have no substance and findings of Ld. CIT(A) require no interference?
>
> B. Whether in law and in the circumstances of the case, the Ld. ITAT has erred in law in dismissing the appeal filed by the Revenue even though the Ld. ITAT has not pointed out any error in the assessment order?

> C. Whether in law and in the circumstances of the case, the Ld. ITAT has erred in law in dismissing the appeal filed by the Revenue as it has completely ignored the finding of the Assessing Officer as recorded in the Assessment Order?
>
> D. Whether in law and in the circumstances of the case, the order of Ld. ITAT is erroneous, perverse and not tenable in law and on facts?"

2. The dispute itself pertains to the disallowance of certain expenses and deletion of additions under Section 68 of the Income Tax Act, 1961 ["**Act**"]. The Tribunal while affirming the findings of the Commissioner of Income Tax (Appeals), has held as follows:

> "**6.** The ground as raised by the Revenue is primarily indicating that Revenue considers the order of learned CIT(A) erroneous for failing to consider the circumstances of the case. However, order of learned CIT(A), when taken into wholesome consideration, brings forth that in para 6.3 all the relevant facts have been discussed. The Revenue can not dispute that the appellant company had filed PAN of investor, which is none other than the holding company. Documents with regard to registered address of investor company, certificate of incorporation and tax residency certificates were filed. Learned AR has taken the Bench through the financials of the investor company, available at pages 125 to 183 of the paper book, to show the source of investor company. The learned AR has also referred to the documents on record in the form of share capital and fund flow of the investor company to establish the creditworthiness. It also comes up from the material on record that AT Holdings is tax resident of Singapore and has reported net profit of around Rs. 341 crores during the year ended 31st December, 2014. There is force in the contention of learned AR that in fact the investing company being foreign company, the source of source was not required to be established even after the amendment brought in Section 68 of the Act qua obligation to establish the source of source.
>
> **7.** Learned AR has pointed out that for the same issue there was reopening of assessment u/s 147 for A.Y. 2012-13 and the assessment has been completed without any addition. It will be beneficial to reproduce relevant part of the said assessment order dated 22.4.2021 available at pages 818 to 821 of the paper book, which goes to show that in year subsequent to 2008-2009, which is followed on principle of consistency by ld. AO, the suspicion with regard to identity and credibility of the investor has been met out

by AO himself. Paragraph 4 & 5 of the order are accordingly, reproduced below:

> "4. During the course of assessment proceedings, the assessee-company was requested to substantiate the identity of the subscriber, genuineness of the transaction and to establish the capacity to subscribe the share capital or creditworthiness of the share subscriber. In compliance to the same, the assessee company has submitted their submission in their support.
>
> 4.1 Assessee was requested vide notice u/s 142(1) of the IT Act dated-14.04.2021 to explain the following: -
>
> (i) As per report sent by High Commission of India, dated 31.10.2011, it is revealed during enquiries that M/s Experion Holdings PTE Ltd (earlier known as Gold Hotels & Resorts PTE Ltd.), consists of just one room which was found closed most of times. In this regard, you are requested to explain as to how they are carrying out their business without any office or manpower. You are further requested to explain as to why M/s Experion Holdings PTE Ltd. should not be treated as bogus or shell entity.
>
> 4.1 In respect of query raised vide notice u/s 142(1) dated-14.04.2021, they explained that the office of the foreign entity has Deen shifted from earlier premises situated at 50, Raffeles Place, #15-05/06, Singapore Land Tower, Singapore-048623 of M/s Gold Hotels & Resorts Pte. Ltd., to 3, Church Street, # 16-04/05, Samsung Hub, Singapore-049483. In support of their claim, they have submitted a copy of lease agreement with lessee & the copy of submission made before the Accounting and Corporate Regulatory Authority(ACRA), Singapore in respect of change of address to 3, Church Street, # 16-04/05, Samsung Hub, Singapore-049483.
>
> 5. During the assessment proceeding, a reference has been made to Singapore Tax Authority through FT & TR vide letter no. Pr. CIT-3/FT&TR/2019-20/2155 dated 23.12.2019, to verify the creditworthiness of subscriber of equity share capital raised by the assessee-company from M/s Experion Holding PTE Ltd. situated at 3, Church Street, Singapore. The reply from the Singapore Tax Authority is still awaited."

8. Lastly, learned AR has pointed out that in fact the money in the form of investment was received not in the previous year but last financial year and reference for that was made in the order of learned CIT(A) itself at page no. 20, where the remittances received from the holding company have been shown of 5.3.2014 while the relevant financial year started from 1.4.2014. Just only because there is allotment of shares in the present year invoking of provisions of Section 68 is not sustainable. Reliance in this regard has been rightly placed by the learned AR on the judgment of Hon'ble Delhi High Court in the case of **CIT Vs. Usha Stud Agricultural Farms Ltd. [2008] 301 ITR 384 (Del.)**, which is also cited before learned CIT(A)."

3. In view of the aforesaid, we are of the considered opinion that no substantial question of law arises. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J

RAVINDER DUDEJA, J

JULY 19, 2024/kk