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

\+ ITA 627/2023

THE COMMISSIONER OF INCOME TAX - INTERNATIONAL TAXATION -3 ..... Appellant

Through: Mr. Ruchir Bhatia, Sr.SC.

versus

UPAID SYSTEMS LTD. ..... Respondent

Through: Mr. Rohit Jain, Mr. Aniket D. Agrawal, Mr. Deepesh Jain and Mr. Abhisek Singhvi, Advs.

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

O R D E R

% **18.03.2024**

1. Having heard learned counsels appearing for parties, we admit the instant appeal on the following question of law:

A. Whether the Income Tax Appellate Tribunal [“**ITAT**”] is correct in deleting addition of INR 156,13,84,785/- on the ground that Assessing Officer [“**AO**”] has rejected valuation report of expert on flimsy grounds is perverse, when in fact the AO has given logical reasons and detailed basis for rejecting the same in the assessment order?

2. This appeal is directed against the order of the ITAT dated 24 March 2023. The dispute appears to have arisen in the context of a valuation report which was submitted before the AO by the assessee.

The AO for reasons recorded chose to debunk that report and made an ad hoc addition. It is this, which led to the ITAT to come to conclude that the assessment would not sustain.

3. We find from a perusal of the impugned order that the ITAT had also taken note of the rebuttal remarks and submissions as submitted by the assessee while seeking to assail the view taken by the AO and seeking re-affirmation of the valuation made by the expert valuer.

4. The ITAT has upon hearing submissions ultimately, proceeded to hold as follows:

> "9. We find substantial merit in the aforesaid submissions of the assessee. It is quite evident, while the assessee has supported the value of royalty through a Valuation Report of an expert, having domain knowledge on the subject, the Assessing Officer has determined the value of royalty on purely ad-hoc/estimation basis not backed by proper reasoning. In any case of the matter, neither the Assessing Officer, nor learned first appellate authority is competent to assume the role of an expert valuer. In case, the Assessing Officer was not satisfied or convinced with the Valuation Report of the expert valuer, proper course for him would have been to seek opinion of a second valuer on the Valuation Report furnished by the assessee. Instead of doing that, the Assessing Officer has taken it upon himself to undertake the exercise on valuation of the royalty. This, in our view, is totally erroneous and against settled legal principles. The Assessing Officer cannot reject the Valuation Report done by an expert in the field, when he has no such expertise. The decisions relied upon by learned counsel appearing for the assessee clearly support this view. It is evident, after rejecting the Valuation Report of the expert on flimsy grounds, the Assessing Officer eventually has proceeded to value the royalty, on purely estimate basis without bringing on record any cogent material to support such estimate. There is no valid reason, why he estimated the reproduction cost to twice the amount determined by the expert valuer. Further, the data relied upon by the Assessing Officer to estimate the value of royalty at 8% per annum on the reproduction cost is not based on any authentically sourced information. These facts are well brought out in assessee's rebuttal to Assessing Officer's observations.
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> 10. As regards the submissions of learned Departmental Representative that in the original return the assessee has attributed

25% of the compensation towards royalty, we must observe, the assessee has subsequently explained that at the time of original return of income, the assessee did not have the benefit of the Valuation Report of the expert, which was available to him subsequently. Hence, filing of revised return of income was necessitated. In absence of contrary material brought on record by the Revenue to finalize the aforesaid claim of the assessee, we are inclined to accept assessee's contention. Thus, in the ultimate analysis, we hold that since, the Assessing Officer has rejected the Valuation Report of the expert on flimsy grounds and has proceeded to make the addition by determining the value of on purely estimate basis, without being backed by any supportive evidence, we are inclined to reject such valuation of Assessing Officer. Accordingly, we delete the addition made by the Assessing Officer on account of royalty. In other words, the Royalty income offered by the assessee in the revised return of income should be accepted. Grounds are allowed."

5. It is the aforesaid observations which appear to have fallen for adverse comment, albeit on a prima facie evaluation, by this Court as would be evident from the order dated 17 November 2023 wherein the following was observed:

> "3. A perusal of Paragraph 9 of the impugned order shows that while the Tribunal has deprecated the approach of the Assessing Officer (AO) and the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] in donning the role of an expert valuer, the Tribunal has thereafter gone on to analyze the errors in the orders of the aforementioned authorities without the benefit of an expert.
> 4. Prima Facie, according to us, every adjudicating authority is entitled to reach its own conclusion after perusing the report of an expert. It is not mandatory, always, to deal with a valuer's report by having another valuer place his opinion on record.
> 4.1 These are, ultimately, opinions, and not binding on an adjudicating authority."

6. Although Mr. Jain, learned counsel appearing for the assessee submitted that we should independently examine the report of the expert, we find ourselves unable to sustain that submission for the following reasons.

7. While it is true that the report of an expert valuer is liable to be accorded due consideration, ultimately it is for the AO to take an

independent, holistic and balanced view after taking into consideration the entire material that is placed by a party. The report of an expert though persuasive clearly has no binding effect. The AO for reasons recorded chose not to accept the report of that expert. However, a similar obligation stood placed upon the ITAT and thus making it incumbent for it to have independently examined the issue at hand. As we read paragraph nos. 9 and 10 of the ITAT order, we find that it has abjectly failed to record any reasons in support of its confirmation, affirmation or acceptance of the opinion of the expert.

8. In that view of the matter, we find ourselves unable to sustain the impugned order. We accordingly, answer the question in favour of the appellant Revenue.

9. The appeal shall stand allowed and the matter shall stand remitted to the ITAT for considering the appeal afresh bearing in mind the observations made hereinabove.

10. Nothing stated hereinabove shall, however, amount to us having expressed any opinion on the merits of the appeal.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 18, 2024/p