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

+ **ITA 385/2024**

THE PR. COMMISSIONER OF INCOME TAX -7

.....Appellant

Through: Mr. Ruchir Bhatia, SSC along
with Mr. Anant Mann, Mr.
Pratyaksh Gupta, JSCs.

versus

YUM RESTAURANT MARKETING PVT. LTD.

.....Respondent

Through: Mr. Mayank Nagi, Mr. Tarun
Singh and Mr. Sandeep Yadav,
Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

20.08.2024

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1. This appeal is directed against the order of the **Income Tax Appellate Tribunal**¹ dated 23 June 2021 and posits the following questions of law for our consideration: -

“2.1 Whether on the facts and circumstances of the case, the order of Ld. ITAT is perverse on Law, as it has considered that the assessee was correct in not considering the decision laid down by CIT(A) in assessee's case for AY 200 1-02?

2.2 Whether on the facts and circumstances of the case, the order of Ld. ITAT is perverse on Law, as it has considered that the assessee has disclosed all the figures and facts in its Financial Statements though the figures disclosed are not true and correct?

2.3 Whether on the facts and circumstances of the case, the order of Ld ITAT is perverse on facts, as it has passed the order dated 23.06.2021 on the basis of the order passed by the coordinate bench

¹ Tribunal



in the assessee's case on same issue for AY 2001-02 -& 2002-03 on 28.03.2019, ignoring the Supreme Court Judgment dated 24.04.2020 in the case of assessee for AY 2001-02 in which it has been held that 'Principle of Mutuality' has been wrongly claimed by the assessee?

2.4 Whether ld. ITAT erred in deleting the penalty of Rs. 1,03,86,424/- imposed by Assessing officer under section 271(l)(c) ignoring the fact that Assessee had furnished inaccurate particulars of its income and is liable for penalty under section 271(l)(c) ? ”

2. The issue itself stands confined to whether the appellants were justified in invoking Section 271(1)(c) of the **Income Tax Act, 1961**² and imposing penalties on account of an alleged furnishing of inaccurate particulars.

3. Mr. Bhatia, learned counsel appearing for the appellant, has drawn our attention to the following findings on fact, which had come to be returned by the **Assessing Officer**³:-

“In the assessment year under consideration, the assessee company has incurred excess of expenditure over the AMP contributions received of Rs.3,05,98,617/-. Whereas as per the agreements with holding company and franchisees, assessee company should booked the amount of Rs.3,05,98,617/- as Advertisement contribution and show the amount as receivable instead of reflected in Loans & Advances, since as per para 2(a) of Schedule 7 of significant accounting policies and notes to the accounts. All income and expenditure having material bearing on the financial statements are recognized on **accrual basis** which the assessee has followed to book the expenditure but failed to booked the revenue part. The assessee company is bound to follow a particular system of accounting in terms with the provision of Section 145 of the IT Act, 1961. Once it started following Mercantile System of Accounting and that a specific sum was receivable under an arrangement (Tripartite Agreement) then it has no discretion to claim it as an Excess of expenditure over contribution received is transferred to current assets, being amount receivable from franchisees and associates in forthcoming periods in accordance with the terms of agreements with the franchisees. Accordingly Rs.3,05,98,617/- is added to the income of the assessee. Since the assessee has furnished inaccurate particulars of his income on this ground, penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 has been initiated separately.”

² Act

³ AO



4. It was in the aforesaid backdrop that learned counsel submitted that since the stand as taken was found to be wholly untenable, the imposition of penalty was clearly justified.

5. The Tribunal, as we had noted in our previous order, had however upheld the deletion of penalty bearing in mind the salient principles which had come to be enunciated by the Supreme Court in **Commissioner of Income Tax, Ahmedabad vs. Reliance Petroproducts Private Ltd.**⁴

6. While dealing with the question of the meaning liable to be ascribed to “inaccurate particulars”, the Supreme Court had pertinently observed as follows:-

“17. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as:-

"not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript".

We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous.

18. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under Section 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars.

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20. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee

⁴ (2010) 11 SCC 762



had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the legislature.”

7. Bearing in mind the legal position as enunciated above, we find no justification to interfere with the order of the Tribunal.
8. The appeal consequently fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 20, 2024/RW