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

\+ ITA 75/2020

PR. COMMISSIONER OF INCOME TAX (CENTRAL)- 2

..... Appellant

Through: Mr.Indruj SIngh Rai, Sr.SC with Mr.Sanjeev Menon, Mr. Rahul Singh, Jr.SCs and Mr.Anirudh, Adv.

versus

M/S PIRON EDUCATION PVT. LTD. ..... Respondent

Through: Mr.Ved Jain, Mr.Nischay, Kantoor and Ms.Soniya Dodeja, Advs.

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

ORDER

% **27.05.2024**

PER: PURUSHAINDRA KUMAR KAURAV, J.

1. This appeal impugns the order dated 31.10.2018, passed by the Income Tax Appellate Tribunal [**"ITAT"**] for Assessment Year 2011-12.

2. The facts of the case manifest that the respondent-assessee is a company registered under the Companies Act, 2013, which is engaged in the business of e-learning. The respondent-assessee filed its Income Tax Return [**"ITR"**] on 05.08.2011, declaring a total income of Rs.21,84,630/-. The case of the respondent-assessee was picked up for scrutiny and a notice under Section 143(2) of the Income Tax Act,

1961 [**“Act”**] was issued on 28.11.2011. Subsequently, on 04.01.2013, a notice under Section 142(1) of the Act alongwith questionnaire was issued.

3. It appears that a survey operation was conducted under Section 133A of the Act at the business premises of M/s Piron Consulting Pvt. Ltd. and M/s Piron Education Pvt. Ltd. Thereafter, an assessment order under Section 143(3) of the Act was passed by the Assessing Officer [**“AO”**] on 09.01.2014, assessing the total income of the respondent-assessee at Rs.5,11,92,406/-, after making the following additions:-

i. Addition of Rs.79,41,900/- on account of bogus expenditure in providing services to M/s ESAJV D-Art Indo India Pvt. Ltd. [**“M/s ESAJV”**].

ii. Addition of Rs.66,32,788/- on the ground of unexplained cash deposited in various bank accounts.

iii. Addition of Rs.40,25,735/- as bogus purchases of fixed assets.

iv. Addition of Rs.30,76,879/- as bogus expenses shown on account of advertisement and business promotional expenses.

v. Addition of Rs.1,53,80,453/- as unaccounted income of the respondent-assessee.

vi. Addition of Rs.5,62,725/- on account of unexplained credit from M/s Piron Design Pvt. Ltd.

vii. Addition of Rs.1,13,87,296/- as unexplained administrative charges.

4. Being aggrieved by the said order, the respondent-assessee preferred an appeal before the Commissioner of Income Tax

(Appeals) [**"CIT(A)"**], who *vide* order dated 25.03.2015 deleted various additions, except sustaining the disallowance of expenses claimed with respect to alleged services provided to M/s EJASV to the tune of 50 percent amounting to Rs.79,41,900/-.

5. However, the Revenue assailed the order of the CIT(A) before the ITAT against the deletion of additions and contemporaneously, a cross objection was also filed by the respondent-assessee against the sustenance of aforesaid disallowance. The ITAT dismissed the appeal of the Revenue and allowed the cross objection of respondent-assessee.

6. In the aforesaid factual background, the Revenue has proposed the following substantial questions of law for our consideration: -

> "A. Whether the ITAT has erred in deleting the addition made by the AO of Rs. 79,41,900/- on account of disallowance of bogus expenses and receipts from M/s EJASV?
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> B. Whether the ITAT has erred in deleting the addition of Rs. 66,32,788/- made by the AO on account of unexplained cash receipts from students and trainees?
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> C. Whether the ITAT has erred in deleting the addition of Rs. 40,25,735/- made by the AO on account of bogus purchases of fixed assets?
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> D. Whether the ITAT has erred in deleting the addition of Rs. 30,76,879/- made by the AO on account of advertisement and business promotion expenses?
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> E. Whether the ITAT has erred in deleting the addition of Rs. 1,53,80,453/- made by the AO on account of unaccounted income being loan repayment?
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> F. Whether the ITAT has erred in deleting the addition of Rs. 5,62, 725/- made by the AO on account of unaccounted income being credit appearing in the name of M/s Piron Designs Pvt. Ltd.?
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> G. Whether the IT AT has erred in deleting the addition of Rs. 1,13,87,296/- made by the AO on account of unexplained administrative expenses?"

7. Mr. Menon, learned counsel appearing for the Revenue, submitted that the ITAT has erred in deleting the additions made by the AO. With respect to aforenoted Questions (A) to (D), he contended that the ITAT has upheld the deletion on such expenses only on the premise that the said receipts were shown in the regular books of accounts. According to him, the respondent-assessee received money on the pretext of rendering services and incurring expenses in physical mode, however, no such infrastructure was found to be existing. He also contended that the respondent-assessee failed to provide any document or evidence to prove genuineness of source of income through which cash was regularly received by it.

8. With regard to proposed Question (E), he submitted that the loan transactions were carried out by the respondent-assessee with its related entities and the ITAT had failed to take into consideration the fact that the said entities did not have requisite creditworthiness. He, therefore, submitted that the transactions entered by the respondent-assessee with such entities were not genuine.

9. Mr. Menon, however, did not press proposed Questions (F) and (G) as the same are merely findings of fact, which do not require any interdiction by this Court.

10. On the contrary, learned counsel appearing on behalf of the respondent-assessee strongly opposed the submissions made by the learned counsel for the Revenue and submitted that the instant appeal does not raise any substantial question of law and thus, liable to be dismissed.

11. Having heard learned counsels appearing on behalf of the parties and upon perusal of record, it comes to the fore that the

additions contested in Questions (A) to (D) were accounted and routed through regular books of accounts. Undisputedly, the said books of accounts were never rejected by the concerned authorities before making and upholding additions. On this aspect, it is apposite to refer to the decision of the Karnataka High Court in the case of **CIT v. Anil Kumar & Co.** [2016 SCC OnLine Kar 8512], wherein, it was held as under: -

> "11. In so far as the estimation of gross profit made by the Assessing Officer modified by the Commissioner of Income-tax (Appeals), the Tribunal has rightly held that when the books of account of the assessee had not been rejected and assessment having not been framed under section 144 of the Income-tax Act the said authorities were in error in resorting to an estimation of income and such exercise undertaken by them was not sustainable. Section 145(3) of the Act lays down that the Assessing Officer can proceed to make assessment to the best of his judgment under section 144 of the Act only in the event of not being satisfied with the correctness of the accounts produced by the assessee. In the instant case the Assessing Officer has not rejected the books of account of the assessee. To put it differently the Assessing Officer has not made out a case that conditions laid down in section 145(3) of the Act are satisfied for rejection of the books of account. **Thus, when the books of account are maintained by the assessee in accordance with the system of accounting, in the regular course of his business, the same would form the basis for computation of income. In the instant case it is noticed that neither the Assessing Officer nor the Commissioner of Income-tax (Appeals) have rejected the books of account maintained by the assessee in the course of the business. As such the Tribunal has rightly rejected or set aside the partial addition made by the Assessing Officer for arriving at gross profit and sustained by the Commissioner of Income-tax (Appeals) and rightly held that the entire addition made by the Assessing Officer was liable to be deleted.** The said finding is based on sound appreciation of facts and it does not give rise for framing substantial question of law."
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> [Emphasis supplied]

12. A similar view was taken in the decision rendered by us in the case of **Pr. Commissioner Of Income Tax (Central)-I v. M/S**

Forum Sales Pvt. Ltd. [ITA 862/2019] and the relevant paragraph of the said decision reads as under: -

> "24. The series of judgments referred to hereinabove clearly allude to the settled position of law that the books of account have to be necessarily rejected before the AO proceeds to the best judgment assessment upon fulfilment of conditions mentioned in the Act. The underlying rationale behind such an action is to meet the standards of correct computation of accounts for the purpose of a more transparent and precise assessment of income. Therefore, any pick and choose method of rejecting certain entries from the books of account while accepting other, without an appropriate justification, is arbitrary and may lead to an incomplete, unreasonable and erroneous computation of income of an assessee."

13. It is, therefore, seen that the proposed substantial Questions (A) to (D) are squarely covered by the aforesaid decisions in favour of the respondent-assessee.

14. Insofar as Question (E) is concerned, it is *ex-facie* evident from the reasoning appended in the CIT(A) order which was also affirmed by the ITAT order that the records pertaining to the entire transactions in question were meticulously perused by the authorities below to ascertain the genuineness of those transactions. Moreover, the alleged taint in the creditworthiness and genuineness of those transactions could satisfactorily be established before us on the score that the assessments of the related entities were already carried out and the genuineness of those transactions was already established in the said assessment exercises. Thus, we do not find any reason to doubt the creditworthiness and genuineness of those transactions.

15. With regard to Questions (F) and (G), Mr. Menon has fairly conceded that the same are based upon findings of fact. Therefore, in our considered opinion, the said questions do not merit admission.

16. In view of the aforesaid, the present appeal does not raise any substantial questions of law. Accordingly, the appeal stands dismissed and pending application(s), if any, are also disposed of.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 27, 2024/MJ