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

+ **ITA 766/2005**

COMMISSIONER OF INCOME TAX DEL Appellant

Through: Mr. Vipul Agrawal, Sr.
Standing Counsel along with
Mr. Gibran Naushad and Ms.
Sakshi Shairwal, Jr. Standing
Counsels.

versus

M/S RAJASTHAN BREWERIES LTD. Respondent

Through: Appearance not given.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINdra KUMAR

KAURAV

ORDER

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29.02.2024

1. The Commissioner impugns the order dated 05 October 2004 passed by the **Income Tax Appellate Tribunal**¹. On 08 April 2008, we had upon hearing learned counsels for parties framed the following questions: -

“1. Whether the Income Tax Appellate Tribunal was correct in law in deleting the trading addition made by the Assessing Officer of Rs.20,27,680/- to the income of the assessee?

2. Whether the ITAT was correct in law in setting aside the order passed by the Commissioner of Income Tax (Appeals) who had remanded the matter back to the file of the Assessing Officer to re-examine the issue of unsecured loan of Rs.24,99,76,564/-?”

2. As is manifest from the above, the first issue which stood raised was with respect to a trading addition of INR 20,27,680/- which had

¹ ITAT



come to be deleted by the **Commissioner of Income Tax (Appeals)**². We note that before the ITAT, the assessee had alluded to the following material which had been placed for the consideration of the **Assessing Officer**³: -

“4. On appeal by the assessee, it was contended before the CIT(A) that the GP rate of the assessee for the FY was at 50.53%. It was contended that the AO did not point out any defect in the accounts maintained by the assessee nor has the AO found that the books of Accounts are not correct. It was submitted by the assessee that it had maintained complete books of accounts supported by voucher, bills and all other relevant documents and that the accounts of the co. are audited and the auditors have expressed full satisfaction about the state of affairs of the co. It was also contended that no specific defects have been pointed out in the books of accounts so as to justify the addition made by the AO. It was also submitted that there was no basis for the AO to have adopted 1 % of the gross sales as an addition to be made to the trading results. Reliance was placed by the assessee on the decision of Allahabad High Court in the case of CIT vs. Aren 227 ITR 401 (Alla) and Aluminium Industries P. Ltd. vs. CIT 80 taxmann 184 (Guhati). In spite of the CIT(A)’s calling for comments of the AO, no comments whatsoever was offered by the AO. The CIT(A) on consideration of the submission made on behalf of the assessee, was of the view that no defects have been pointed out by the AO in the books of accounts maintained by the assessee. The CIT (A) also found that the details were examined on a test check basis by the AO and yet no defects whatsoever had been pointed out in the books of accounts. The CIT(A) also held that the excise registers could have been verified from the excise authorities and this was not a valid ground for making the impugned addition. The addition of 1% made by the AO was held to be without any basis and based merely on conjectures. The addition was thus deleted by the CIT(A). Aggrieved by the order of the AO the revenue is in appeal before us.”

3. It is also the undisputed position that the books of accounts of the assessee were not rejected. It was on an overall conspectus of the aforesaid that the ITAT came to hold that CIT(A) was justified in deleting the addition as made. We find no manifest error in the view

² CIT(A)

³ AO



so taken by the ITAT. The first question shall consequently stand answered against the appellant.

4. That takes us to the question of the demand which had been raised by the CIT(A) and emanated from unsecured loans aggregating to INR 24,99,76,564/- to the file of the AO for re-examination. The order of the CIT(A) to the aforesaid extent appears to have been challenged by the assessee. The ITAT while dealing with this question has in paragraph 18 observed as follows: -

“18. As far as the action of CIT(A) in remanding the matter back to the AO for fresh consideration is concerned, it is found from the records that the three creditors whose names appear in the balance sheet were assignees of the original creditors of the assessee. The documents filed before the AO regarding the credits in the name of the original creditors have been scrutinized by the AO and he has expressed his satisfaction regarding these credits. As already stated the assignment had taken place on 31.3.95 the last date of the FY. As far as the assessee is concerned, he was to explain the fact regarding nature and source of original creditors and the fact that the new creditors are the assignees of the original creditors. These facts have been established by the assessee and the AO has expressed satisfaction regarding explanation offered by the assessee. The fact that the new creditors were not income tax assessee would certainly raise a doubt about the genuineness of the transaction as well as credit worthiness of the creditors. But this was a matter which M/s ACIL (the original creditors) had to explain. The AO was therefore justified in reserving this enquiry to be made in the assessment of M/s ACIL (and the other creditors). The action of the AO in this regard is found to be justified. Apart from the above the only reason assigned by the CIT(A) for remanding the matter for fresh consideration by the AO was the fact that the AO did not respond to his letter dated 2.11.98 calling for explanation as to why the credits in question were not considered in the case of the assessee u/s 68 of the IT Act. There was no material for the AO to come to conclusion that a further enquiry was called for by the AO. As already held the assessee has sufficiently explained the credits in the question and therefore the action of the AO was fully justified. In our view the CIT(A) erred in directing the AO to re-examine these credits in accordance with law. We therefore reverse the order of CIT(A) and restore the order of AO in this regard. The grounds of CO in this regard are allowed.”



5. In our considered opinion, the ITAT has clearly erred in seeking to absolve the assessee from the obligation of explaining the “*genuineness*” and “*credit worthiness*” of the entities from whom those unsecured loans had been received. Merely because those lenders were assignees of the original creditor of the assessee would have made no substantial difference to the issue. We are thus of the firm opinion that the CIT(A) was clearly justified in remitting the matter to the file of the AO. The second question shall stand answered in favour of the appellant.

6. The appeal shall consequently stand partly allowed. We answer Question No. 2 in favour of the appellant and set aside the order impugned in the appeal to the aforesaid extent. We also reinstate the direction framed by the CIT (A).

YASHWANT VARMA, J

PURUSHAINDRA KUMAR KAURAV, J

FEBRUARY 29, 2024

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