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

\+ ITA 59/2024

PRINCIPAL COMMISSIONER OF INCOME TAX 1

..... Appellant

Through: Mr.Prashant Meharchandani, Sr.SC with Mr.Akshat Singh, Jr.SC and Ms.Ritika Vohra, Adv.

versus

ALL CHECK DEALS INDIA PRIVATE LIMITED

..... Respondent

Through: Mr.Manuj Sabharwal, Mr.Sudip Lodh and Ms.Shalini, Advs.

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

<u>O R D E R</u>

% **14.02.2024**

<u>CM APPL. 4413/2024 (condonation of delay of 187 days in fling the appeal)</u>

1. This is an application filed by the appellant seeking condonation of 187 days delay in filing the appeal. For the reasons stated in the application, the delay of 187 days in filing the appeal is condoned. Application is disposed of.

<u>ITA 59/2024</u>

1. The Department has instituted the present appeal seeking to question the judgment rendered by the Income Tax Appellate Tribunal ["**ITAT**"] dated 24 November 2022 and raises the following questions of law for our consideration:-

(a) Whether on the facts & under the circumstances of the case, the ITAT is justified in law in confirming the decision of Commissioner of Income Tax (Appeals) [“**CIT(A)**”] without appreciating the fact that the assessee company is actually parting/sharing/diverting its income to its holding company using various name of expenditures inviting the implication of Section 37(1) and 40A(2) of the Income Tax Act, 1961 [“**Act**”]?

(b) Whether on the facts & under the circumstances of the case, the ITAT is justified in law in confirming the decision of CIT(A) without appreciating the fact that the nature of expenses were contractual in nature inviting the provisions of Section 40(a)(ia) of the Act?

(c) Whether on the facts & under the circumstances of the case, the ITAT is justified in law in confirming the decision of CIT(A) without appreciating the fact of the case and merely stated that the assessee has not claimed more Tax Deducted at Source [“**TDS**”] than reflected in Form 26AS?

2. We note that in so far as question (a) is concerned, undisputedly an identical view had been taken by the CIT(A) in favour of the assessee in Assessment Year [“**AY**”] 2012-2013 and which was not questioned or appealed against.

3. Even otherwise, we note that the ITAT, while dealing with this aspect, has observed as under:-

> "11. <u>In this context it can be appreciated that relevant clause of memorandum of understanding available at page No. 395 to 396 of the paper book establish the fact that the assessee company had entered into the MOU with its parent company to use the premises and infrastructural facilities of the parent company in areas where the assessee did not consider its beneficial to have own lease</u>

premises or an independent infrastructural and other related facilities. Therefore, on the basis of cost to cost basis of direct expenses and proportionate basis in terms of proportion of employees for indirect/ allocated expenses, the assessee company had agreed to make the payments.

12. However, from the order of the ld it comes up that he had failed to take note of the fact that primarily the assessee company had preferred to make payment to its parent company to cut it's costs as the parent company was already operating from multiple locations across India where it had office premises and set up with various vendors providing various infrastructure related services while the assessee company had its own leased premises at Delhi NCR only while it was operating across India, where its parent was also operating simultaneously. The assessment order no-where examined the financials of the assessee company to conclude that the payment were made beyond fair market value of the services rendered by the parent company or that those cost to cost basis payment of charges were not justified with ·the nature of volume of business of the assessee at different locations. The short sighted approach of the ld AO had been rightly considered by the ld CIT(A) while appreciating the statements of the assessee and the modalities of the running the business in association with the parent company.

13. The findings of the ld CIT(A) in assessee's own case for Assessment Year 2012-2013 and 2013-14 as reproduced in the impugned order of the ld CIT(A) and also reproduced above in para 5, show that the ld AO had fallen an error in observing that the assessee has separately debited the expenses under similar heads in profit and loss account as it ignored that such expenses pertain to officer where the assessee was having office independently and was not taking any service from IEIL. This bench is of considered opinion that the opinion that the findings of the ld CIT(A) in deleting the additions require no interference."

4. The second question which is proposed for our consideration does not even appear to have been urged or canvassed before the ITAT. That only leaves us to examine question (c).

5. While dealing with the issues forming part of the aforesaid, the ITAT has observed as under:-

"14. In regard to ground No. 2 it can be observed from the order of the ld CIT(A) that taking into consideration the nature of transactions in the real estate sector and the fact that the assessee has not claimed more TDS than reflected in 26AS statement, had deleted the addition. The reasoned finding of the Id CIT(A) require no interference."

6. It appears that the aforesaid question emanates in the backdrop of certain income which was not disclosed by the assessee in its Return. However, TDS appears to have been deducted thereon and stood duly reflected in the Form 26AS Statement.

7. In that view of the matter and since no adverse impact would be caused to the Revenue, we find no justification to entertain the appeal on the said question.

8. The appeal consequently fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 14, 2024/MJ