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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision : 24.12.2024

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ITA 582/2024 CM APPL. 76320/2024

THE COMMISSIONER OF INCOME
TAX - INTERNATIONAL TAXATION -1

.....Appellant

Through: Mr Ruchir Bhatia, SSC, Mr Anant
Mann, JSC Mr Pranjal Singh, and Mr
Abhishek Anand, Advocates.

versus

CRICKET AUSTRALIA

.....Respondent

Through: None.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

VIBHU BAKHRU, ACJ. (ORAL)

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) impugning an order dated 31.10.2023 (hereafter *the impugned order*) passed by the learned Income Tax Appellate Tribunal (hereafter *the ITAT*) whereby the appeal preferred by the respondent (hereafter *the Assessee*) being ITA No.605/Del/2023 in respect of the assessment year (AY) 2013-14 against the final assessment order dated 24.01.2023 passed under Section 147 of the Act, was allowed.

2. The Assessee had filed the said appeal raising several grounds,



however, the same was allowed by the learned ITAT on the sole ground that the reopening of the assessment was without the application of mind. The learned ITAT referred to its earlier decision in the case of M/s. Cricket South Africa (Association) in ITA No.604/Del/2023 whereby the appeal of that assessee was allowed on a similar ground.

3. This court is informed that the appeal preferred by the Revenue in respect of the order passed by the learned ITAT in ITA No.604/Del/2023 has since been dismissed by this court on 23.09.2024 [ITA No.498/2024 captioned *The Commissioner of Income Tax - International Taxation -I v. Cricket South Africa (NCP)*].

4. In the present case, the reasons set out for reopening of the assessment are similarly worded as the reasons set out for reopening of the assessment in the case of M/s. Cricket South Africa (Association) in respect of AY 2014-15. The reasons for reopening in respect of both the cases have been set out by the learned ITAT in the impugned order.

5. The reasons for reopening of the assessment in the case of the Assessee are reproduced below: -

“Reasons of reopening of the assessment in the case of M/s. Cricket Australia, for Assessment Year 2013-14 u/s.147 of the Act.

Name of the assessee	M/s Cricket Australia
Address of the assessee	60, Jolimont Street Jolimont Victoria, Australia, AU 3002 Foreign



PAN of the assessee	AFECC5341D
Assessment Year	2013-14
Details of the Assessing Officer having jurisdiction over the Assessee	DCIT Cir-1(2) (a), Intl. Tax, New Delhi

2. As per NMS information disseminated through AIMS module of ITBA M/s. Cricket Australia (PAN No.AAECC5341D) has not filed ITR during F.Y. 2013-14.

3. As per AIR information, it is noticed that the said assessee has filed TDS return u/s 195 of Rs.3,19,44,410- and u/s. 194E of Rs.1,92,33,307/-, but couldn't file ITR onwards. In light of this, the genuineness of financial transaction/business activity of this company could not be ascertained.

4. Thus from the above discussion, it is clear that the incomes during FY 2012-13 has escaped assessment in India as M/s. Cricket Australia has not filed return in India for A.Y. 2013-14.

5. In view of the above, I have reason to believe that the income during the FY 2012-13 relevant to A.Y. 2013-14 has escaped assessment as defined u/s. 147 of the Income-Tax Act, 1961. Accordingly, notice u/s. 148 of the Act may be issued in this case.

6. In this case, the only requirement to initiate proceedings u/s. 147 is reason to believe which has been recorded above. This case is beyond four years & within six years from the end of the assessment year under consideration. Therefore, approval u/s 151(1) of the Act is solicited. Accordingly, put for your kind perusal and approval please.”

6. Admittedly, paragraph no.3 of the said reasons is erroneous as the Assessee had not filed the TDS return under Section 195 of the Act, as recorded in the said reasons.

7. Mr Bhatia, the learned counsel appearing for the Revenue submits that paragraph no.4 of the reasons as set out by the Assessing Officer (AO) for reopening of the assessment in case of the M/s Cricket South Africa



(Association) were identically worded as the reasons for reopening of the assessment in the case of the Assessee in the present case. Even the name of the assessee was referred as M/s. Cricket Australia instead of M/s. Cricket South Africa. Further the AY in that case was AY 2014-15, which was erroneously mentioned as AY 2013-14. He submits that however the contents of the paragraph no.4 of the reasons as recorded in case of the Assessee are correct and free from any errors.

8. The focus of his submission is essentially that although the orders passed by the learned ITAT in the case of M/s. Cricket South Africa (Association) ought not to have been relied upon by the ITAT to allow the Assessee's appeal as one of the major errors in the reasons recorded for reopening of the assessment in the case of M/s. Cricket South Africa (Association) is not common to the reasons recorded for reopening of the assessment in the case of the Assessee.

9. Whilst, it may be correct that all the errors that had crept into the reasons recorded for reopening of the assessment in the case of M/s. Cricket South Africa (Association) are not common with the reasons as recorded in the case of the Assessee, but it is undisputed that the reasons as recorded contain material errors, as are noted above.

10. Clearly, the question is not whether the errors are identical but whether the AO had applied its mind to the question of reopening the assessment in the case of the Assessee. Since, it is not disputed that the brief reasons as recorded by the AO for reopening of the assessment in the Assessee's case contain material errors, the decision of the ITAT to fault the



reopening of the assessment, does not warrant any interference by this court.

11. No substantial question of law arises in the present case.

12. In view of the above, the present appeal is dismissed. Pending application also stands disposed of.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

DECEMBER 24, 2024

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Click here to check corrigendum, if any