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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 724/2018

PR. COMMISSIONER OF INCOME TAX-12,
DELHI

.....Appellant

Through: Mr. Sanjeev Menon, Mr. Rahul
Singh & Mr. Anmol Jagga,
Advocates for Mr. Indruj Singh
Rai, SSC.

versus

BIMAL KUMAR JAIN

.....Respondent

Through: Mr. M.L. Garg & Mr. Ajay
Garg, Advocates

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **16.07.2024**

1. The Principal Commissioner of Income Tax assails the order of the Income Tax Appellate Tribunal [**"Tribunal"**] dated 27 November 2017 and proposes the following questions of law for our consideration:

- "i. Whether the Ld. ITAT erred in deleting the disallowance made by the Ld. Assessing Officer of alleged loss worth ₹4,85,00,000/- on account of short supply, claimed by the Assessee?
- ii. Whether the Ld. ITAT erred in law in ignoring that until prima facie evidence is adduced in support of a claim, onus does not shift on the Assessing Officer to disprove the same?
- iii. Whether the Ld. ITAT erred in not appreciating the Ld. AO's logical finding that the evidence produced by the Assessee in the form of settlement reached between the Assessee and Rabirun Vinimay (P.) Ltd. was self serving?"

2. Having heard Mr. Menon, learned counsel appearing for the appellant, and on going through the judgment handed down by the Tribunal we find that insofar as the questions posited before us are concerned, it has come to record the following findings of facts:

"We have carefully considered the rival contentions and perused



the orders of the lower authorities. The facts are culled out from the orders of the lower authorities that assessee imported CR mill equipment from three different parties and these goods were sold on high seas basis, to M/s Rabirun Vinimay Limited. The amount of the purchases and the sale consideration received by the assessee are not disputed. The assessee demonstrated the fact of purchase of goods as well as sale of goods to the third party by submitting requisite evidences. There is no dispute on these facts. However, as the buyer took delivery of the imported goods at Paradip port reported that there is a short supply of goods. As the goods were in short supply to complete the project of CR mill equipments, the buyer incurred the cost of buying those goods from the outside market. Therefore, the buyer incurred an additional cost of Rs. 9.5 crores. To compensate this loss the buyer and the assessee entered into a settlement deed where the material facts as well as the reasons for entering into the settlement deed were noted. According to the settlement deed, the buyer raised a debit note of Rs. 4.85 crores on the assessee and the assessee as a business loss made such claim. However while recording the purchases and sales in the books of accounts of the assessee reduced a sum of Rs. 4.85 crores from the total sales recorded therein of CR mill equipment. The claim of the assessing officer is that that assessee has reduced this sum from the sales, but should have been recorded as short supply. We do not find any merit in the argument of the Ld. assessing officer with respect to the accounting entries made by the assessee. In fact, the assessee has recorded the actual sales after reducing the short receipt or sales price reduced on account of the about transaction is. It is not the case before us that assessee has received any material as sales return. Therefore, according to us the assessee has not made any mistake in recording due sales amount arising on account of this compensation of short supply paid to the buyer. Further, the Ld. assessing officer has stated that assessee has not entered the purchase and sale transaction through any intermediary. We find that it is for the assessee to decide how he wants to carry on his business. Therefore, if the assessee wants to enter the business directly through the various overseas sellers it cannot be found fault with assessee. The Ld. assessing officer should have appreciated that the assessee has entered into the total transaction of import of such goods of 178 crores and has earned profit thereon of Rs. 1. 78 crores. The assessee has further entered into the business of fabrics and diamonds for Rs. 6.97 crores and has shown profit of Rs. 50.35 Lacs. Therefore, assessee cannot be dictated the manner in which he should carry on his business. He assumes risk and earns his reward based on his business modality. The revenue is to tax on the rewards earned by the assessee. The revenue is to tax on the rewards earned by the assessee. The assessee paid the above compensation to the buyer on account of short supply of goods received by it on account of high seas sales made by the



assessee. Therefore, the assessee assumed such risk at the time of sales. Further, the adequate evidences furnished by the assessee before the lower authorities also supported the above loss. However, the Ld. assessing officer stated that the assessee should have produced more evidences. However, it was not stated by him that what other evidences were required. Merely because the assessee has produced the evidences. According to the wishes and design of the Ld. assessing officer the claim of the assessee cannot be denied. Further, more in the present case even the Ld. assessing officer did not state that what more evidences assessee should have submitted. On appreciation of the evidences submitted by the assessee, such as the settlement deed, the high seas sale details, the income tax return of the buyer and debit notes, it is apparent that the adequate evidences to justify the loss incurred by the buyer, which was partly compensated by the assessee and claimed as a business loss cannot be disallowed. Furthermore, the Ld. assessing officer also verified that the buyer has accounted for this loss may be towards the reduction in the cost of the purchase of the fixed assets by the buyer, but that does not make any difference regarding the claim of the assessee. As the above loss has been incurred by the assessee during the course of the business and incurred during the year, hence, the assessee is entitled to get the deduction of the same. Regarding the genuineness of the claim., it is supported by the settlement deed and confirmation of the buyer who received the above sum by issuing the debit note. The Id CIT (A) has considered all the reasons given by the Id Assessing Officer for disallowance and after that has allowed the claim of the assessee. The Id Departmental Representative also could not point out any error in the order of the Id CIT (A). In view of this we confirm the finding of the Id CIT(A) in deleting the disallowance of Rs. 4.85 crores on account of reimbursement of the cost of short supply replenished to the buyer as deduction under the head 'Profits and Gains' of the business. In the result, the solitary ground of appeal of the revenue is dismissed."

3. The view so taken was an affirmation of the opinion formed by the Commissioner of Income Tax (Appeals).
4. On an overall consideration of the above, we find no substantial question of law arises. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 16, 2024/_{RM}