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

\+ ITA 1206/2018

THE PR. COMMISSIONER

OF INCOME TAX -7 .....Appellant

Through: Mr. Sanjay Kumar and Ms. Easha, Advocates.

versus

OSN INFRASTRUCTURE & PROJECTS PVT. LTD. .....Respondent

Through: Mr. P. Roychaudhuri, Advocate.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **30.08.2024**

1. The Principal Commissioner impugns the order of the Income Tax Appellate Tribunal [‘**Tribunal**’] dated 20 April 2018 and posits the following questions of law for our consideration: -

> “2.1 Whether Id. ITAT is legally justified in deleting disallowance of business loss by ignoring a fact that the Assessee had not discharged its initial onus that the loss was actually incurred and it was in the nature of revenue loss?
> 2.2 Whether the ld. ITAT is legally justified in allowing the loss of Rs.14,49,33,613/- on revenue account by ignoring a fact that the amount represented write off of advances given for purchase of lands which was in nature of capital loss?
> 2.3 Whether the ld. ITAT is legally justified in allowing the loss of Rs.14,49,33,613/- on revenue account solely on the basis of self-serving claim. of the Assessee that advances were given for purchase of lands was revenue in nature for the reasons that un-materialized purchase of lands were for stock in trade?
> 2.4 Whether Id. ITAT is legally justified in allowing the loss of Rs.14,49,33,613/- on revenue account even when the claim of advances for unmaterialized purchase of land for stock in trade was

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not proved by the assessee?"

2. We, however, find that while dealing with the explanation which was proffered with respect to the suspect payments as well as the claim for write off, the Commissioner of Income Tax (Appeals) ['**CIT (A)**'] had in its order observed as follows:-

> "6.1. I have considered the assessment order, the submissions made, the documents filed and also the assessment records (called from the AO). The relevant documents filed before me were also filed before the AO. Facts are that the appellant company is involved in the business of land acquisition and consolidation on behalf of, and also undertaking construction activities, mainly for its principal M/s Educomp Infrastructure and School Management Ltd. (EISM) of the Educomp group. During the year and a year earlier, the appellant company also helped M/s Edusmart Services Pvt. Ltd. (ESS), another company of the Educomp group, in recovery of debt from various trade debtors through the process of debt syndication involving 6 intermediary parties/agents. During the search and surveys conducted on the Educomp group, in which the appellant was also covered, evidence was gathered that the appellant was involved in generation of cash through over-invoicing of works /purchases, as also generation of unaccounted income from the loan syndication business conducted for and on behalf of the Educomp group. When confronted with the evidence collected, director of the appellant company admitted to having earned unaccounted income of Rs.75 crore in two years, out of which income of Rs.59.25 crore was admitted as undisclosed income of the appellant company in AY s 2011-12 and 2012-13 (current AY). The amount of Rs.33.60 crore was offered to tax by the appellant in AY 2011-12 and has been taxed as such. In the current AY (2012-13) the appellant has offered the remaining amount of Rs.25.65 crore to tax. However, in the current A Y, the appellant has also claimed loss in the land acquisition and consolidation business amounting to Rs.14,49,33,613/-, being amounts remaining irrecoverable from three parties, M/s Salasar Corporation, M/s Shri Ganpati Trading Company and M/s Sumit Trading Company, with whom the appellant company had entered into deeds of settlement on 21.03.2012. The agreements for engaging these entities as agents for land consolidation were entered into by the appellant earlier on 17.09.2010, 10.09.2010 and 09.09.2010 respectively. The fact that the deeds of settlement were entered after the date of search perhaps cast a suspicion on the claim, The claim was disallowed as the said 3 parties did not respond to letters issued u/s 133(6) by the revenue, and the claim of

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loss was held to be excessive. Appellant's case is that it was never confronted with the fact that the parties had not responded and, thus, not allowed necessary opportunity despite having filed all documents and evidence which have never been doubted. It is rejection of the claim of loss without proper opportunity which has been disputed by the appellant in this appeal.

6.2 The details of payments made I recovered to I from the three parties are as under:

M/s Salasar Corporation, Sirsa				
PAYMENTS		RECEIPTS		
Date	Amount (Rs.)	Date	Amount (Rs.)	
14.09.2010	30000000	05.05.2011	2500000	
16.09.2010	50000000	09.05.2011	7250000	
23.09.2010	25000000	10.05.2011	15400000	
24.09.2010	9000000	11.05.2011	16000000	
		12.05.2011	17500000	
		23.05.2011	1747887	
		02.06.2011	1400000	
		03.06.2011	2050000	
		06.06.2011	1000000	
		07.06.2011	2300000	
		09.06.2011	918500	
		03.08.2011	1000000	
TOTAL	114000000	TOTAL	69066387	
Balance written off				44933613

M/s Shri Ganpati Trading Company, Sirsa			
PAYMENTS		RECEIPTS	
Date	Amount (Rs.)	Date	Amount (Rs.)
09.09.2010	50000000		
TOTAL	50000000	TOTAL	0
		Balance written off	50000000

M/s Sumit Trading, Sirsa			
PAYMENTS		RECEIPTS	
Date	Amount (Rs.)	Date	Amount (Rs.)
21.09.2010	25000000		
22.11.2010	25000000		
TOTAL	50000000	TOTAL	0
Balance written off			50000000

6.3 <u>The amounts were paid to the three parties from the HDFC</u>

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Bank account of the appellant and amounts returned by M/s Salasar Corporation was from its Axis Bank account. I find that the appellant made these payments from an amount of Rs.50 crore received from EISM on 06.09.2010 and also appellant's own funds and amounts realized on sale of Birla Sun Life Mutual Funds owned by the appellant. The land acquisition account of EISM has been squared up in the books of the appellant by adjustment of Rs.42,50,00,000/- and Rs.50,92,84,600/- (totaling Rs.93,42,84,600/-) transferred by journal entry and debited on 30.03.2011 in the name of one 'Babu Lal', and also against payments for construction activities and service tax account of EISM. The balances in these two accounts as on 31.03.2012 amounting to Rs.6,99,32,078/- (land acquisition account) and Rs.5,97,900/- (construction activities and service tax account), totaling Rs.7,05,29,978/-, have been converted to unsecured loan from EISM, which is duly reflected in the appellant's balance sheet. Thus, except for this amount of unsecured loan, there is nothing to be paid by the appellant to EISM as on 31.03.2012. In the books of the appellant, amounts paid to the three parties are not credited to the account of EISM, implying that these amounts have not been charged to EISM but remained the risk and responsibility of the appellant company. I further find that the appellant company or its directors are not directly or indirectly related to or linked with the entities of the Educomp group. Their relationship is purely business-based.

6.4 The facts of the case are not in dispute. From the above facts, it cannot be concluded that claim of the appellant is incorrect. The only dispute is whether the loss claimed by the appellant company in writing off the amounts due from the land consolidators is an allowable business loss I expense. I have carefully considered the matter. There is no evidence to establish that the amounts written off have been received back in any form by the appellant or its principals. The amounts have actually been written off by way of valid deeds of settlement which are legally enforceable documents. Even if it is assumed that the amounts written off are some sort of compensation paid to some parties through the appellant company, it would still be expenditure in the hands of the appellant company or its principals. I hold accordingly.

6.5 Since the amounts have been written off after executing valid deeds of settlement, legally enforceable documents, the appellant has given up the claim on these amounts. Thus, these amounts partake the character of income in the hands of those persons. I find that no effort has been made to bring to tax the amounts written off as income in the hands of the persons to whom the money was advanced. I, accordingly, direct the AO to furnish the relevant information and documents to the assessing officers of M/s Sumit

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Trading Company, M/s Salasar Corporation and M/s Shree Ganpati Trading Company to initiate necessary action to tax these amounts in their hands in accordance with the law. In case it is found that this money was transferred back by these parties to the appellant or its principals in any form, the amounts so transferred shall be taxable as income of the appellant company or its principals, as the case may be. I also direct the AO to examine the matter relating to adjustment of Rs.93,42,84,600/- by way journal entry on 30.03.2011 debited to Babu Lal during the assessment proceedings for the next A Y 2013-14.

6.6. I also find that the initial submissions of the appellant based ,on the assumption that the amount written off was against monies advanced for acquiring land as stock-in-trade is incorrect to the extent that the appellant is not involved in the business of purchase and sale of land but only acquired and consolidates land on behalf of its principals in the Educomp group."

3. As is manifest from the above, the payments which were made to various parties were duly explained by the respondent/assessee in detail as would be evident from what stands recorded in paragraph 6.3.

4. Similarly, and insofar as the issue of write off is concerned, the CIT(A) had found that the same was based on validly executed deeds of settlement. It is this view which has ultimately come to be affirmed by the Tribunal.

5. Bearing in mind the consideration accorded by the CIT(A) which came to be affirmed by the Tribunal, we are of the opinion that no substantial question of law arises.

6. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

AUGUST 30, 2024/*vp*

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