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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/166/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS
APOLLO GLENEAGLES HOSPITAL LIMITED

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : January 31, 2025.

Appearance :
Mr.Om Narayan Rai, Adv.
Mr.Prithu Dudhoria, Adv.
..for appellant
Mr. Nikhilesh Gupta, Adv.
Mr. Siddharth Das, Adv.
Mr. Indranil Banerjee, Adv.
…for respondent

The Court: - We have heard the learned Counsel for either sides.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 27th April, 2023 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata in ITA/1639/Kol/2019 for the assessment year 2013-14. The revenue has suggested the following substantial questions of law for consideration:-

i) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in not appreciating that the assessee is making payment to its foreign AE for those alleged services which are stewardship in nature, and therefore the arm's length price for such services should be NIL?

ii) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in not appreciating the international rulings and

OECD guidelines for such alleged intra-group services which tantamount to be stewardship services do not warrant compensation?

iii) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in not appreciating that the assessee has failed to prove the benefit test for paying the support services fee which is a prerequisite for determination of a charge for the alleged service?

iv) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in not appreciating that benefit test for intra-group services ought to be evaluated?

The revenue was unsuccessful in their challenge to the order passed by the Commissioner of Income Tax (Appeals) -22 of Kolkata [CIT(A)] dated 22.05.2019. The respondent/assessee challenged the decision of the Transfer Pricing Officer or TPO, who disallowed the management fees as claimed by the assessee. The [CIT(A)] considered the appeal and found that the assessing officer has entirely relied upon the order passed by the TPO for the immediate preceding year namely the assessment year 2012-13 without making a fresh reference. The assessee contended that each year of assessment is independent proceedings and the assessing officer was required by law to make a fresh reference for the year under consideration. That apart, the [CIT(A)] noted that the order passed by the TPO for the immediate preceding year, i.e., AY 2012-13 was challenged by way of an appeal before [CIT(A)] and the appeal filed by the assessee was allowed by order dated 29th March, 2019. It is not in dispute that the said order has attained finality, as the revenue could not prefer an appeal on account of the appeal being dismissed on the ground of low tax effect. Be that as it may, we find that the TPO though selected CUP as the method for benchmarking in such a situation, he failed to cite even a single comparable company with a similar comparable service. Despite the assessee having submitted the detailed nature of service received and benefit obtained by it, we find that the order passed by the [CIT(A)] to be an elaborate order considering all the facts and figures placed before it. Ultimately the appeal was partly allowed. The revenue carried the matter by way of appeal to the learned Tribunal and we find that the learned Tribunal re-appreciated the factual position and dismissed the appeal filed by the revenue. Thus, it is relevant to note that the learned Tribunal has recorded a specific factual findings that the claim of management fee expenses has been accepted by the department and no addition has been made for the same in the assessment year 2014-15 and assessment year 2015-16. That apart, we find that the learned Tribunal has also taken note of the decision of the other High Courts and that of the Coordinate Bench of the learned Tribunal. Thus, we find that the learned Tribunal has upon re-appreciation of the factual position rightly dismissed the appeal filed by the revenue and we find no good ground to interfere with the said order.

Accordingly, the appeal filed by the revenue fails and is dismissed and the substantial questions of law are answered against the revenue.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.