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

+ ITA 313/2015

PR. COMMISSIONER OF INCOME TAX -3 Appellant
Through: Mr. Kamal Sawhney, Sr. Standing
Counsel with Mr. Raghvendra Singh, Advocate.

versus

FORTUNE TECHNOCOMPS (P) LIMITED Respondent
Through: Dr. Rakesh Gupta with Ms. Poonam
Ahuja, Mr. Rohit Kr. Gupta and Mr. Nitin
Malhotra, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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20.05.2015

1. The Revenue is aggrieved by an order of the Income Tax Appellate Tribunal ("ITAT") passed in ITA No.1466/Del/2011 and 1582/Del/2011 dated 21.11.2014. It is urged that the ITAT fell into error in not disturbing the CIT (A)'s findings with respect to the genuineness of the purchases made in the course of the business by the assessee for AY 2007-08.

2. The assessee used to deal with electronic articles. In the normal course of its business it used to procure unbranded electronic items and sell them. In the scrutiny assessment, the Assessing Officer added ₹3,62,49,274/- after rejecting the assessee's explanation



with regard to the purchase made from nine named parties. It was held that these were bogus transactions and that the assessee could not report any satisfactory explanation. The AO was guided by the fact that the sellers/vendors of the items purchased by the assessee had not responded to notices under Section 131 and also relied upon the report of the Income Tax Inspector in that regard. In the appeal, the CIT (A) permitted the assessee to file voluminous records for the first time - apparently they comprised 412 pages of documents and materials. Subsequently, the matter was remanded and remand report was put to the parties. Based upon the rival submissions and after elaborate consideration of the circumstances, particularly those pertaining to each of the nine vendors/parties, the CIT (A) concluded as follows: -

“5. Finding on Ground No.1: -

I have carefully considered the evidences gathered and confronted by the AO to the assessee during the assessment proceedings which has been elaborately discussed in the order, the additional evidences filed by the appellant during the appellate proceedings, the copy of remand report which encloses the evidences now gathered from the Sales Tax Department, and the further efforts made by the AO in tracing the nine parties before sending the remand report. Indeed, all efforts including sending Inspector of Income Tax on addresses gathered from the Banks have been made to trace the 9 parties which is laudable but unfortunately there was not a single compliance from any of these 9 parties. A direct enquiry relating to the source from where these parties had made the purchases as well as their cost to them could have possible made only if these parties had appeared before the AO. At the same time it is a matter of record that all these nine parties are having TIN No. and have been assessed to Sales tax for the



relevant financial year, where their assessed turnover for FY 06-07 is at a much higher figure than the amount for which they have sold goods to the appellant. The PAN, Ration Card, Passport, Driving License etc. are also reported to be available on Sales Tax records. From these documentation and the fact that these parties are having bank accounts where the payments received in the subsequent F.Y. from the appellant has been deposited goes on to establish the identity of these parties. As to the reason why these parties, who have not filed Income Tax Returns for AY 07-08, have not appeared before the Income Tax Authorities is a matter best known to them.

The question however remains whether the appellant could be held accountable in as much as the entire purchases of unbranded electronic items can be termed as bogus & accordingly disallowed, as has been held by the AO, only because these parties are not appearing before the I.T. Authorities, which is after a gap of more than 2 years from the date of the disputed transactions. It is a matter of record that the appellant is not having any business transaction with these parties since more than 2 years. I am constrained to hold on a balancing of facts that as the identity of the parties is on record with Banking authorities, IT Authorities, Sales tax authorities etc. & payments have been effected through cheques and the fact that the purchase made from these nine parties have been recorded in the stock register of appellant and from which itself the subsequent sales have been made goes on to show that it may not be appropriate to outrightly hold that the purchases are bogus merely because the parties are not traceable now. In fact any finding to this effect would also carry itself with the natural inference that the corresponding sales should also be held bogus and deleted from the turnover of the assessee. In view thereof on a totality of facts & circumstances & dispassionate weighing of the evidences the addition made by the AO by holding the entire purchases as bogus transactions and disallowing the same is not sustainable.”



3. The CIT (A), however, rejected the subsequent sales by the assessee who had stated that the electronic items were sold at below cost price and reported loss. The findings of the CIT (A) on both counts were upheld by the ITAT.

4. The Revenue urges that the ITAT in the circumstances of the case fell into error in not seeing that the directions to the nine parties would be termed as genuine consideration and that none of them had responded during the assessment proceedings. Most of them had closed down their businesses and some reliance on certain sales tax assessments was inconclusive as to whether the underlined transactions claimed by the assessee were genuine. It is also pointed out that the ITAT itself noticed that the CIT (A) had not decided the issue finally. To say so, counsel relied upon paragraph 8.1 of the impugned order.

5. We have carefully considered the submissions of the parties. The CIT (A) had in the course of its order not only permitted additional evidence but also called for a remand report. The remand report comprised of various materials including the PAN Number, TIN Number and assessment orders secured from the sales tax authorities. This aspect had discussed in about ten pages of the CIT (A)'s order and was concluded in paragraph 5 (extracted *supra*). The genuineness of the underlined transactions claimed by the assessee – on having purchased goods from its vendors, could not be doubted. An isolated reliance placed upon the ITAT's order to say that the point is left moot is under the circumstances not accurate.

6. Having regard to the fact that the question of law in this case



sought to be urged centres around the appreciation of pure findings of fact with regard to which the Revenue has not been able to show any perversity, the Court is of the opinion that no question of law arises for consideration. The appeal is, therefore, dismissed.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

MAY 20, 2015
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