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

+ ITA 325/2022 & CM APPLs. 40145-46/2022

PR. COMMISSIONER OF INCOME TAX-4 Appellant

Through: Mr. Zoheb Hossain, Sr. Standing
Counsel for Revenue with Mr. Vipul
Agrawal & Mr. Parth Semwal, Jr.
Standing Counsels.

versus

M/S. GGC CONSTRUCTIONS PVT. LTD. Respondent

Through: None.

% Date of Decision: 13th September, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 40145/2022

In view of the averments made in the application, the delay of 59 days in re-filing the present appeal is condoned.

Accordingly, the present application stands disposed of.

CM APPL. 40146/2022

Exemption allowed, subject to all just exceptions.

Accordingly, present application stands disposed of.

ITA 325/2022

1. The present Income Tax Appeal has been filed seeking a direction for setting aside the order dated 30th July, 2019, passed by the Income Tax



Appellate Tribunal ('ITAT') in ITA No. 1258/Del/2016 for the Assessment Year ('AY') 2012-13.

2. Learned Senior Standing Counsel for the Appellant-Revenue, states that the ITAT erred in upholding Commissioner of Income Tax (Appeals)'s ['CIT(A)'] order dated 29th December, 2015, deleting the addition of Rs. 17,20,728/- made by the Assessing Officer ('AO'), on account of business loss of futures and options claimed by the Assessee, which was not claimed in the original return. He states that the business loss could not have been allowed as there is no provision under the Income Tax Act, 1961(the 'Act') to enable an Assessee to make an amendment in the return of income during assessment proceedings, without revising the return in accordance with Section 139(5) of the Act. He states that the AO had rightly disallowed the business losses, since the Assessee failed to file a revised return claiming the loss, by placing reliance on the decision of the Supreme Court in the case of ***Goetze India Ltd. vs. CIT, [2006] 284 ITR 223 (SC)***.

3. He states that ITAT erred in partly upholding the CIT(A)'s order deleting the addition of Rs. 4,33,89,909, which was made by the AO on the presumption that the sundry creditors of the said amount as reflected in the balance sheet represent bogus expenses. He states that the AO rightly disallowed the said amount on the basis of the enquiry conducted by the AO, which revealed that the claim of the Assessee on account of the expenses incurred by it on purchase of the material to the extent of the aforesaid amount could not be substantiated by reliable documentary evidence and it was not supported by the suppliers.

4. He further states that the ITAT erred in upholding the CIT(A)'s order



deleting the addition of Rs. 70,79,504/- made by the AO on account of static creditors as the ITAT failed to appreciate that the Assessee had in its written reply surrendered the said amount and offered the same for taxation. He stated that in view of the voluntary admission of the Assessee no further enquiry was required to be conducted by the AO with respect to the aforesaid amount.

5. We have heard the learned Senior Standing Counsel for Revenue and perused the paper book. It would be relevant to note at the outset that the AO had disallowed a sum of Rs. 4,83,89,009/- on account of bogus expenses after taking into account the amount of sundry creditors recorded in the accounts under the head of sundry creditors. The Assessee filed a rectification application under Section 154 of the Act highlighting that the said figure is erroneous and the correct figure is Rs. 4,33,89,009/-. It was stated that the same was a typographical error. The AO failed to pass orders on the said rectification application. Since the mistake was apparent from the record, the CIT(A) while allowing the appeal corrected the said amount and deleted the sum of Rs. 50,00,000/- on account of typographical error. The learned counsel states that there is no dispute with respect to the said deletion.

6. The learned ITAT upheld the order of the CIT(A) permitting the Assessee to claim the losses on account of futures and options after taking note that the said loss had been duly set off by the Assessee in its audited accounts and therefore, it was clearly a mistake. It noted that while computing taxable income, the Assessee had made an error in the return which was rectified by filing a revised computation of income during the assesment proceedings. The appellate authorities further held that this



error could have been rectified by the AO himself by computing the correct income of Assessee. The reliance placed by the ITAT on the judgment of this Court in *CIT vs. Jai Parabolic Springs Ltd., [2008] 306 ITR 42* is correct.

In this appeal as well, the learned counsel for the appellant has not disputed that it was a case of mistake which led to the Assessee not claiming the set of losses while computing the taxable income in the return.

7. With respect to the disallowance of the addition of Rs. 4,33,89,009/-, which was the amount reflected by the Assessee as its sundry creditors, the CIT(A) observed that the AO had made the said addition in the absence of confirmation from the sundry creditors after concluding that the said figure correspond to the value of bogus purchases. The CIT(A) sought the bank statement of the Assessee, which evidenced payments made through account payee cheques to most of the creditors in subsequent years. The CIT(A) noted that the outstanding sundry creditors pertain to Assessee's project J-174, (Saket), New Delhi, in respect whereof there were legal disputes pending with the owner of the property. The CIT(A), therefore, after perusing the record and after satisfying itself with respect to the genuineness of the sundry creditors and noting the fact that the said sundry creditors had been paid through bank transactions, except the sundry creditors for the Saket Project, deleted the addition made by the AO. The ITAT as well after perusing the record was satisfied with respect to the genuineness of the claim of the Assessee with respect to sundry creditors to the extent of Rs. 3,81,03,519/- and to this extent it upheld the deletion made by the CIT(A). With respect to the sundry creditors for a sum of Rs. 52,85,490/- which pertained to the Saket Project, the CIT(A) has remanded back the matter to



the AO for verification.

In this appeal, the learned counsel has not disputed the aforesaid concurrent findings of the appellate authorities to the effect that the evidence placed on record by the Assessee evidenced payments to the sundry creditors in the subsequent years. The AO after opining on the genuineness of the purchases, disallowed the sundry creditors and held the creditors to be doubtful. ITAT and CIT(A) satisfied itself with respect to the genuineness of the sundry creditors through bank statements and thereafter deleted the addition. The learned counsel for the Revenue has been unable to bring out any deficiency in the said concurrent finding of the appellate authorities. The learned counsel's endeavor to urge this Court to examine the issue of bogus purchases by perusing the bills and statements of alleged suppliers in these proceedings cannot be accepted. This Court in exercise of its jurisdiction under Section 260A of the Act is confined to hearing substantial questions of law and interference on the finding of facts is not warranted if it involves re-appreciating of evidence.

8. The learned counsel has not been able to point out any perversity in the finding of facts. We therefore, find no infirmity in the orders of the appellate authorities deleting the addition made on account of bogus expenses corresponding to the sundry creditors.

9. With respect to the disallowance on account of static creditors, the CIT(A) observed that the AO had failed to take into account the submissions filed by the Assessee retracting its earlier surrender and filing before the AO documents to show that the said creditors were not static and had been cleared/squared up/adjusted or written off in the subsequent period. The



CIT(A) noted that the documents filed show that creditors to the tune of Rs. 16,62,575/- which were written off, had been declared by the Assessee as income in FY 2014-15 and the Assessee had placed on record documents and ledger accounts which evidence that the creditors were not static. The CIT(A) observed that the AO had neither mentioned any discrepancy in the said documents nor questioned the veracity of the said documents placed before it. The CIT(A) concluded that the AO could not have relied on the initial letter of surrender to make this addition in the absence of any other documents. The ITAT concurred with the findings of the CIT(A) and held that the AO could not have relied upon initial letter for making such an addition when to the knowledge of the AO the Assessee had retracted the said letter during the assesment proceedings. The ITAT noted that the department representative had not brought on record any material on record to contradict the fact findings of the CIT(A) on this issue and accordingly upheld the said deletion. In this appeal as well, the learned counsel for the Revenue has not brought to our attention any material to indicate that the finding of the appellate authorities is incorrect. His sole contention was that since the Assessee initially had surrendered the income, no further enquiry was required to be conducted by the AO. He, however, could not point any infirmity in the findings of the CIT(A) while deleting the said addition.

10. Further, qua the disallowance of losses during assessment proceeding, this Court in the case of **Jai Parabolic (Supra)**, at Para 9 has framed the following question of law for determination i.e., “*Whether the Tribunal was right in law in allowing relief of Rs. 15,58,500 in the assessment year under consideration when no such claim was made by the Assessee in the return of income*”, thereafter, at paragraph 13 a reference was made to the decision of



the Supreme Court in the case of *National Thermal Power Co. Ltd. v. CIT*, [1998] 229 ITR 383, wherein the Court has held that, the tribunal dealing with appeals has wide powers and the purpose of the assessment proceedings is to assess the correct tax liability of an Assessee in accordance with law. The tribunal should not be prevented from considering questions of law arising in assessment proceedings although not raised earlier.

11. Further, as per the Circular No. 14(XL-35) of 1955 dated 11th April, 1955, as well the Department has been directed to assist a taxpayer where the proceedings or other particulars before AO indicate that some refund or relief is due to the Assessee.

12. We, therefore, find that in the present appeal, the appellate authorities have returned concurrent findings of fact by deleting the additions made by the AO. The ITAT is the final fact finding authority and no material has been placed on record to contradict the findings of the appellate authorities, therefore, no substantial question of law arises for consideration in the present appeal. Accordingly, the same is dismissed.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

SEPTEMBER 13, 2022/msh