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

+ ITA 396/2024

SUBHASH CHANDER SEHGALAppellant

Through: Dr. Rakesh Gupta, Adv.

versus

DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE -
19(1), NEW DELHI AND ANRRespondents

Through: Mr. Aseem Chawla, SSC along
with Ms. Pratishtha Chaudhary,
Adv.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

29.07.2024

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CM APPL. 42354/2024 (Exemption)

Allowed, subject to all just exceptions.

Application stands disposed of.

ITA 396/2024

1. The appellant-assessee impugns the order of the Income Tax Appellate Tribunal [**'Tribunal'**] dated 24 January 2024 and posits the following questions for our consideration:-

- a. Whether Tribunal has erred in law in passing a perverse order?
- b. Whether Tribunal has erred in law in resorting to adhoc 10% disallowance of the selling and distribution expenses even though books of accounts of assessee were accepted as correct?
- c. Whether Tribunal has erred in law in limiting the disallowances to 10% on ad-hoc basis and that too on the basis of presumptions?"

2. We take note of the following conclusions which have ultimately come to be recorded by the Tribunal and which appear in Paras 22, 23 and 24 of the order impugned before us:-



“22. It could be seen from the above, the Ld.CIT(A) sustained the addition taking note of the order sheet noting, where the AO noted that the complete books, bills, vouchers are not produced the bills, vouchers, ledger related to these expenses, bill book found not properly maintained, some found unsigned, some found not documented properly, un-vouched. It is also the observation of the Ld.CIT(A) that the assessee could not prepare the complete list of parties with whom the transaction of Rs. 1 lakh or more had taken place with their addresses. Ld.CIT(Appeals) also took note of the letter furnished by the assessee dated 19.06.2017, wherein the assessee has stated that since the expenses relates to payment made to persons/parties running into thousands it is time taking to prepare a list incorporating the addresses of all the parties and, therefore, to mark identity of the parties entries so that the information in respect of those transactions may be furnished.

23. In view of the above reasons, the Ld.CIT(A) was of the view that the AO is justified in holding that the entire sales and marketing expenses cannot be said to be incurred wholly and exclusively for the purpose of business of the assessee and, therefore, sustained the disallowance made by the AO.

24. Taking the totality of the facts and circumstances into consideration, the findings of the AO as well as the Ld.CIT(A) and the evidences produced in the Paper Book, we are of the view that the disallowance made by the AO at 25% is excessive. Taking note of various deficiencies pointed out by the AO as well as the findings of the Ld .CIT(A) and taking the submissions of the Assessee into consideration to meet the ends of justice, we direct the AO to restrict the disallowance to 10% of the selling and distribution expenses as against 25% disallowed and recompute the income accordingly.”

3. For the completeness of record, we note that the position had remained the same even before the Commissioner of Income Tax (Appeals) as would be evident from the following extracts of its order:-

“I have considered all the facts and circumstances of the case. The Assessing Officer in his order has stated categorically that the appellant was asked to provide or relevant details i.e. ledger and bills and vouchers to substantiate the claim of such huge expenses under the head salary and distribution expenses. The appellant avail to provide complete books of accounts, along with supporting bills and vouchers before AO, in spite of being given an opportunity.

During appellate proceedings, however, the appellant has stated that complete book of accounts, bills and vouchers were produced before Assessing Officer. To verify the claim of the appellant, the assessment record was summoned. From the perusal



of assessment record it was seen that on 11/03/2015 the Assessing Officer in his order sheet has recorded as under:-

"Sh H.P.S. Gujrai,CA/AR present for hearing and produced books of account, which test checked. ON examination of the details it is noticed that during the year assessee has claim expenses on account of marking and sale promotion which approximately of 47% of total turnover. Previous year it was 31%. On examination the further details bills/vouchers and ledger related to this expenses, some bill book found not properly maintained, some found unsigned, some found not documented properly, unvouched. According the AR show cause on this issue that why not disallowance be made as assessee has failed to substantiate its claim and failed to produce enough evidences. Case adjourned for 18/03/2015 for explanation as well we complete books of accounts, bills vouchers for support of its claim as only vouchers/bills produce partly." "

4. On an overall conspectus of the aforesaid, we find ourselves unable to discern any substantial question of law which can be said to arise from the order impugned.
5. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

TARA VITASTA GANJU, J.

JULY 29, 2024/RW