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

Date of decision: November 27, 2014

\+ ITA 490/2014

THE COMMISSIONER OF INCOME TAX-II

..... Appellant

Through: Mr.Rohit Madan,Sr.Standing Counsel with Mr.Ruchir Bhatia, Mr.Akash Vajpai, Advs.

versus

JUBILANT SECURITIES PVT.LTD.

..... Respondent

Through: Ms.Kavita Jha, Adv.

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THE COMMISSIONER OF INCOME TAX-II

..... Appellant

Through: Mr.Rohit Madan,Sr.Standing Counsel with Mr.Ruchir Bhatia, Mr.Akash Vajpai, Advs.

versus

JUBILANT SECURITIES PVT.LTD.

..... Respondent

Through: Ms.Kavita Jha, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J (ORAL)

1. These two appeals filed by the revenue pertain to the Assessment Year 2009-10 and arise out of one order of the Income Tax Appellate Tribunal ('Tribunal' in short) dated 09.01.2014. The revenue has possibly preferred two appeals as two cross appeals were

disposed by the Tribunal by the said impugned order.

2. Two issues have been raised in the present appeals. First issue relates to the deletion of addition of Rs.25,19,529/- made by the Assessing Officer on account of service charges paid to M/s. Jubilant Enpro Pvt. Ltd. and the second issue relates to direction of the Tribunal affirming the order of the Commissioner of Income Tax (Appeals) restricting the disallowance under Section 14A of the Income Tax Act, 1961 ('Act' in short) read with Rule 8D of the Income Tax Rules, 1962 ('Rules', in short) to Rs. 62,96,037/- as against disallowance of Rs. 1,02,40,167/- made by the Assessing Officer.

First Issue:-

3. The respondent-assessee had paid service charges of Rs.95,84,561/- to a group company M/s. Jubilant Enpro Pvt. Ltd., who had provided services under a Memorandum of Understanding dated January 05, 2006. M/s. Jubilant Enpro Pvt. Ltd. was also providing similar/identical services to other group companies of the respondent assessee. As per the terms of payment agreed between the respondent assessee and M/s. Jubilant Enpro Pvt. Ltd., reimbursement or payment for services provided, was to be made by the assessee and group companies upon the apportionment of cost incurred by M/s. Jubilant Enpro Pvt. Ltd. The apportionment was done, on the basis of the rigs deployed. The Assessing Officer felt that this was not the correct

method of apportionment of cost and the service charges paid to M Jubilant Enpro Pvt. Ltd. He made an addition by disallowing expenditure of Rs.25,19,529/-, observing that the apportionment should not have been done on the basis of number of rigs but on the basis of revenue generated. The aforesaid finding was affirmed in the first appeal by the Commissioner of Income Tax (Appeals).

4. The said finding has been reversed by the Tribunal in the impugned order. The Tribunal, accepting the plea of the assessee, has observed that the services rendered by M/s. Jubilant Enpro Pvt. Ltd. were in the nature of assistance and support services like assistance in relation to obtaining work, submissions of bids and subsequent negotiations, advising current developments, advising regarding Visas and labour permits, advice on importation and exportation of material vessels equipments rigs etc. The aforesaid work and obligation undertaken by M/s. Jubilant Enpro Pvt. Ltd. was dependant upon the number of rigs and this would determine cost apportionment of the support services which were given and provided to the recipients. The services were not dependent upon the size of the rigs or the turnover. The contention of the respondent assessee that the apportionment of cost should not be made on the basis of the turnover, but, on the basis of number rigs was accepted. The aforesaid findings are findings of fact and there is no reason or ground to hold that the said findings are

perverse. Noticeably, M/s. Jubilant Enpro Pvt. Ltd. had provid services to other sister concerns of the respondent assessee. The amount and quantum paid by the assessee and other group companies is not in dispute. Any disallowance in the hands of the respondent assessee would necessarily mean increase of expenditure incurred by the sister concern, as there is no dispute about the cost incurred by M/s. Jubilant Enpro Pvt. Ltd. Otherwise also, it would result in reduction or lower income earned by M/s. Jubilant Enpro Pvt. Ltd. The Assessing Officer did not invoke Section 40A(2) of the Act, or hold that the payment made were disproportionate to the market value of the services rendered. Engaging services of M/s. Jubilant Enpro Pvt. Ltd. had helped the assessee and other group companies to reduce costs, as for the common services they did not engage employees or consultants separately. This is clear from the submission made and findings of the Tribunal that there was commonality in the nature of services and therefore, the respondent assessee and other sister concerns had established and taken services from one cost centre i.e. M/s. Jubilant Enpro Pvt. Ltd. The respondent company and others had agreed to pay for the services by way of reimbursement of expenses. In view of the aforesaid position, we do not think, in the present appeals, the first issues requires admission.

Second issue:-

5. On the second issue also, the appeal preferred by the revenue without merit. By our last order dated 16.10.2014, we had asked the learned counsel for the revenue to take instructions on whether any appeal was filed against the order of the Tribunal for the Assessment Year 2008-09 and examine whether interest accrued on loan of Rs. 5 Crores given to a third party was shown or treated as taxable income in the hands of the respondent assessee.

6. Learned Sr.Standing Counsel for the revenue has not been able to obtain instructions but on behalf of the respondent assessee, a copy of the order dated 26.10.2012 relating to the Assessment Year 2008-09 passed by the Tribunal has been placed on record. As per the findings recorded in the said order, the interest on loan of Rs.5 Crores had been utilized for giving loan of the same amount to another party. Further, the loan to the third party had earned taxable income. Therefore, the interest on such loan proportionate to utilization, was excluded from the total interest for the purpose of Clause (ii) of Sub-Rule (2) to Rule 8D of the Rules.

7. When we examine the order of the Commissioner of Income Tax (Appeals) who had accepted the assessee's contention in the present Assessment Year, it is obvious that this factual position is correct. The Commissioner of Income Tax (Appeals) has recorded and held that interest of Rs.47,08,000/- was incurred exclusively towards earning of

taxable income and therefore should be excluded from the total interest of Rs.1,23,27,915/-, while computing the disallowance under Clause (ii) to Rule 8D(2) of the Rules. Thereafter, the Commissioner of Income Tax (Appeals) recomputed the disallowance under the said Clause (ii) to Rule 8D(2) as under:

(A). Interest expenditure claimed in the P&L A/c 76,19,915/-

(B). Average value of investment 32,70,93,142/-

(C). Average value of assets *44,20,94,179/-*

(D). Relatable interest *(A"B/C)* (76,19,915 " 32,70,93,142/ 44,20,94,179) = Rs. *56,37,762/-*.

8. For the sake of clarity, we record that the assessee in the present case has himself followed Sub-Rule (ii) Clause (ii) of Rule 8D of the Rules for computing the disallowance in respect of interest paid.

9. We notice that the Assessing Officer while computing the disallowance under Rule 8D had treated the Direct Administrative Expenses incurred by the assessee for earning of exempt income as 'NIL'. However, the assessee in the revised computation, had quantified the Administrative Expenses incurred for earning of exempt income at Rs.6,58,275-. When we add Rs.56,36,875/- and Rs. 6,58,275/-, the resultant figure is Rs.62,95,150/-. Disallowance of Rs.62,95,150/- has been upheld by the Tribunal, affirming the order of the Commissioner of Income Tax (Appeals). In the Assessment Order, no ground or reason has been given, why the Assessing Officer was

not satisfied with the disallowance of Rs.6,58,275/-, why and for wh reason on examining the accounts, the said disallowance was not appropriate and reasonable. Noticeably, the assessee had filed an application under Section 154 of the Act during the course of the assessment proceedings, revising the disallowance from Rs.93,43,343/- to Rs.62,95,150/-. The reason for reworking of the disallowance is decipherable when we refer to the chart reproduced by the Commissioner of Income Tax (Appeals) in paragraph 6. The assessee had wrongly computed the figure of Rs.93,43,343/- by taking the total interest at Rs.1,27,27,103/-, i.e. without excluding interest of Rs. 47,08,000/-, which was incurred on loan utilized for earning of taxable income.

10. The other reason why we are not inclined to interfere is that disallowance made by the Assessing Officer under Clause (iii) to Rule 8D(2) was Rs.16,35,466/-, as against the disallowance made by the assessee of Rs.6,58,275/-. The Assessing Officer had not made any disallowance on account of direct expenses. The difference between the two amount is Rs.10 lakhs. Thus, the quantum of tax involved would be rather low.

11. Learned counsel for the assessee has also stated that the order for the Assessment Year 2008-09 has been accepted by the revenue and has attained finality.

12. In view of the aforesaid factual position, we are not inclined entertain the present appeal on the second issue also.

The appeals are accordingly dismissed.

SANJIV KHANNA, J

V. KAMESWAR RAO, J

NOVEMBER 27, 2014/akb