2023:DHC:5610-DB

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

% ***Decision delivered on: 28.07.2023***

\+ **ITA 302/2022**

THE PR. COMMISSIONER OF INCOME TAX -6 ..... Appellant

Through: Mr Aseem Chawla, Sr. Standing Counsel with Ms Pratishtha Chaudhary and Mr Aditya Gupta, Advocates

versus

NOKIA SOLUTIONS AND NETWORKS INDIA PVT. LTD. ..... Respondent

Through: Mr Deepak Chopra and Mr Ankul Goyal, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. This appeal concerns Assessment Year (AY) 2010-11.

2. Via this appeal, the appellant/revenue seeks to assail the order dated 19.11.2019 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

3. The appellant/revenue has proposed the following questions of law:

> *"(i) Whether on the facts and circumstances of the case and in law, Id. ITAT erred in deleting the addition of Rs.1,02,88,91,000/- made by Assessing officer on account of unearned revenue ignoring the fact that Accounting Standard cannot override the provision of the Income Tax Act, 1961?*
>
> *(ii) Whether on the facts and circumstances of the case and in law. Id. ITAT erred in deleting the addition of Rs.57,93,45,721/- made by Assessing officer on account of provision for liquidated damages?"*

4. Insofar as the first question is concerned, it would be convenient to refer to paragraph 14 of the impugned order which discloses the breakup of Rs.1,02,88,91,000/-, which is shown as unearned revenue by the respondent/assessee. For the sake of convenience, the said table is extracted hereafter:

Customer Name	*Unearned Revenue recognized in Financial statements as on March 31, 2010 (Amount in INR)*	*Details of Revenue deferment*
Bharti Airtel Limited	8,55,37,789	
Tata	51,04,09,155	Refer Appendix I
Vodafone	10,48,30,713	Refer Appendix II
Idea	3,63,91,093	Refer Appendix III
Bharat Sanchar	27,85,70,650	
Other	1,31,51,655	
Grand Total	1,02,88,91,055	

5. Furthermore, we find that the Tribunal has returned a finding of fact that these very amounts were offered to tax in the subsequent year, as and when services were offered. This is evident on perusal of paragraphs 21 and 25 of the impugned order. For the sake of convenience, the said paragraphs are extracted hereafter:

> *"21.* ***Needless to mention her that same accounting principle has been accepted in earlier A.Y. it is also pertinent to note that the assessee has offered tax in subsequent years amount as and when services are rendered and, therefore, by any stretch of imagination, it cannot be said that there is some revenue leakage.*** *For this proposition, we derive support from the decision of the Hon'ble Supreme Court in the case of Excel Industries 358 ITR 295.*
>
> *...*
>
> *25. Considering the facts of the case in totality, in the light of contractual terms and conditions, and considering the fact that*

> *the unearned revenue has been offered for tax in the subsequent years as exhibited in chart elsewhere, we are of the considered opinion that addition of Rs. 1,02,88,91,000/- is uncalled for and deserves to be deleted. Thus, Ground No. 2 is allowed".*

6. From a reading of the impugned order two findings of fact emerge.

(i) First, the money received by the respondent/assessee was offered for imposition of tax only when services were rendered.

(ii) Second, this was an accounting practice followed consistently for several years.

(iii). Lastly, since the tax rate remained the same, no loss was caused to the revenue by the respondent/assessee offering the aforementioned amount for the tax in the subsequent period.

7. This position of law appears to have been, in a sense, recognized by the coordinate bench of this court in a judgment rendered in ***Commissioner of Income Tax-III vs Shyam Telelink Ltd.***, [2019] 101 Taxmann.com 218 (Delhi). The relevant observations made in the said judgement, are extracted hereafter:

> *"15. On the question of application of the accounting principles, Section 145 of the Act and mandate of the Companies Act and paragraph 9 of the Accounting Standards, in Dinesh Kumar Goel (supra) it was observed:—*
>
> *"28. Reading of the aforesaid (AS) 9 makes it clear that revenue is recognized only when the services are actually rendered. If the services are rendered partially, revenue is to be shown proportionate with the degree of completion of the services. This really clinches the issue in favour of the assessee.*
>
> *29. Though our discussion on the issue is complete, the parting comments need to be made.* ***The receipts relate to the unexecuted packages, which are not shown in the instant year would be shown in the succeeding year. Rate of tax in respect of companies remains the same in all these years. Therefore, the Revenue does not lose anything, as it would receive the tax on***

<u>this income in the succeeding year. Still issues are raised and much outcry is made for nothing</u>.”

16. Thereafter, the Delhi High Court in Dinesh Kumar Goel (supra) had quoted the following passage from the decision of Bombay High Court in Commissioner of Income Tax v. Nagri Mills Co. Ltd., [1958] 33 ITR 681 (Bom):

“We have often wondered why the Income tax authorities, in a matter such as this where the deduction is obviously a permissible deduction under the income tax Act, raise disputes as to the year in which the deduction should be allowed. The question as to the year in which a deduction is allowable may be material when the rate of tax chargeable on the assessee in two different years is different; but in the case of income of a company, tax is attracted at a uniform rate, and whether the deduction in respect of bonus was granted in the assessment year 1952-53 or in the assessment year corresponding to the accounting year 1952, that is in the assessment year 1953-54, should be a matter of no consequence to the Department; and one should have thought that the Department would not fritter away its energies in fighting matters of this kind. But, obviously, judging from the references that come up to us every now and then, the Department appears to delight in raising points of this character which do not affect the taxability of the assessee or the tax that the Department is likely to collect from him whether in one year or the other.”

<u>17. In Bilahari Investment (P) Ltd. (supra), the Supreme Court had elucidated that revenue recognition was attainable by several methods of accounting</u>. *The same result could be attained by any one of the accounting methods. Completed contract method was one such method. Similarly, percentage of completion method was another such method. Percentage of completion method tries to attain periodic recognition of income in order to reflect current performance. The amount of revenue recognized under this method is determined by reference to the stage of completion of the contract.*

<u>18. The appropriation of prepaid amount was contingent upon the respondent-assessee performing its obligation and rendering services to the prepaid customers as per the terms. If the respondent-assessee had failed to perform the services as promised, it would be liable and under an obligation to refund the advance payment recieved under the ordinary law of contract or special enactments, like the Consumer Protection Act.</u> *The aforesaid legal position would meet the argument of the Revenue that the prepaid amount received was not liable to be*

refunded or repaid, whether or not any services were rendered..”

[Emphasis is ours]

8. Therefore, the proposed question no. (i) in our opinion does not require consideration.

9. Insofar as the proposed question no. (ii) is concerned, we have in another appeal of the revenue i.e., ITA 761/2018, remanded the matter to the Tribunal for reconsideration.

9.1. We intend to do the same in the instant case as well, since the Tribunal, in the instant case, has followed decision rendered by it in AY 2004-05, which is the AY that is involved in the matter we have remanded for reconsideration.

10. Therefore, the impugned order is set aside on the issue concerning liquidated damages.

10.1. The directions contained in our order passed today i.e., 28.07.2019 in ITA No. 761/2018 will apply *mutatis mutandis* in this matter as well, as regards the issue concerning liquidated damages.

11. Counsel for the parties will appear before the Tribunal on 28.08.2023.

12. The appeal is disposed of, in the aforesaid terms.

RAJIV SHAKDHER
JUDGE

GIRISH KATHPALIA
JUDGE

JULY 28, 2023/as

Click here to check corrigendum, if any