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

% *Decision delivered on: 11.08.2023*

\+ **ITA 1008/2018**

COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr Sunil Agarwal, Sr Standing Counsel with Mr Shivansh B. Pandya, Standing Counsel and Mr Utkash Tiwari, Adv.

versus

DEEPSONS SOUTHENED ..... Respondent

Through: Dr Rakesh Gupta, Mr R.R. Maurya, Mr Somil Agarwal and Mr Anshul Mittal, Advs.

\+ **ITA 1316/2018**

COMMISSIONER OF INCOME TAX ..... Appellant

Through: Mr Sunil Agarwal, Sr Standing Counsel with Mr Shivansh B. Pandya, Standing Counsel and Mr Utkash Tiwari, Adv.

versus

M/S DEEPSONS SOUTHENED ..... Respondent

Through: Dr Rakesh Gupta, Mr R.R. Maurya, Mr Somil Agarwal and Mr Anshul Mittal, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MS. JUSTICE TARA VITASTA GANJU
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. These appeals are preferred against a common order dated 25.10.2017, passed by the Income Tax Appellate Tribunal [in short, "Tribunal"], concerning Assessment Year (AY) 2000-01.

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2. *Via* the impugned order, the Tribunal was required to deal with the appeals preferred by the appellant/revenue as well as the respondent/assessee.

3. A challenge had been laid, before the Tribunal, to the order of the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"] dated 16.03.2007.

4. Broadly, the appeals arose in the backdrop of certain additions made by the Assessing Officer (AO), which were reversed on merits by the CIT(A), *via* order dated 16.03.2007.

5. On the question of law as to whether the reassessment proceedings could, at all, have been triggered against the respondent/assessee, the CIT(A) ruled against the respondent/assessee. It is this that led to the respondent/assessee also lodging an appeal with the Tribunal.

6. As is evident from what is noted hereinabove, the CIT(A), on merits, found in favour of the respondent/assessee and hence, the four additions made by the AO were deleted.

7. The Tribunal, *via* the impugned order, has sustained the order of the CIT(A) on merits, and also ruled in favour of the respondent/assessee on the question of law concerning the reopening of assessment under Section 147/148 of the Income Tax Act, 1961 [in short, "Act"].

8. For the purposes of adjudicating these appeals, the following broad facts are required to be noticed:

8.1 The respondent/assessee is a partnership firm which was, apparently, constituted on 02.07.1999. With the induction of a new partner, a fresh partnership deed was executed on 22.11.1999. The partnership firm,

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apparently, also carried out in the relevant period, retail business in garments.

9. The first year for closure of accounts of the respondent/assessee ended on 31.03.2000. Accordingly, the Return of Income (ROI) was filed by the respondent/assessee.

10. The record shows that the ROI filed for the aforementioned AY, i.e., AY 2000-01, declared the income as "nil" and, apparently, intimation *qua* the respondent/assessee's ROI was given under Section 143(1) of the Act.

11. The record shows that on 26.02.2002, a search and seizure operation was carried out under Section 132 of the Act *qua* the respondent/assessee.

12. This led to the commencement of block assessment proceedings under the old regime, i.e., under the provisions of Section 158BC of the Act.

12.1 It is in these proceedings that the AO made certain additions to the respondent/assessee's declared income, which, as indicated above, was "nil".

12.2 This position was reflected in the block assessment order dated 27.02.2004. The block assessment order spanned over 01.04.1995 and 26.06.2004.

13. The record shows that on 12.07.2004, a notice under Section 148 of the Act was issued to the petitioner on account the discovery of certain material during the course of the block assessment.

13.1 This is embedded in the reasons to believe framed by the AO on 12.07.2004. The following were the four aspects which formed the basis for triggering notice under Section 148 of the Act:

(i) First, willful under-declaration of the investment made in the subject

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Signing Date:15.09.2023 17:56:18

immovable property, i.e., M-10, South Extension-II, New Delhi. The under-declaration was pegged at Rs.9.04 crores.

(ii) Second, non-disclosure of commission on the declared purchase price, i.e., Rs.2.25 crores. The commission was calculated at the rate of 2% and, thus, crystalized at Rs.4,50,000/-.

(iii) The reduction in the opening balance of outstanding loan, as appearing on 31.03.2000, which was a figure amounting to Rs.25,00,000/-, to Rs.21,00,000/-, as on 31.03.2001. According to the AO, the reduction in the loan amount, not having been explained was also a sufficient reason for triggering the reassessment proceedings.

(iv) The introduction of unexplained capital amounting to Rs.2.579 crores.

14. Insofar as the block assessment order dated 27.02.2004 was concerned, the respondent/assessee had preferred an appeal against it, which was disposed of by the CIT(A) *via* order dated 24.12.2004.

14.1 Broadly, the appeal was disposed of in favour of respondent/assessee on the ground that no incriminating material was found in the search and seizure action concerning the unexplained investment in the subject property.

14.2 Thus, the CIT(A) concluded that the addition on this count was unsustainable.

15. The appeal preferred by the appellant/revenue before the Tribunal failed to unsettle the order passed by the CIT(A). The Tribunal *via* order dated 03.04.2017 confirmed the order of the CIT(A) dated 24.12.2004 passed in block assessment proceedings.

18. Furthermore, the record discloses that the AO passed an assessment

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Signing Date:15.09.2023 17:56:18

order on 16.03.2006 in the Section 147/148 proceedings, whereby, he sustained the four additions referred to hereinabove, based on which the proceedings had been commenced.

18.1 The result was that the respondent/assessee's income, which was declared as "nil", was reassessed at Rs.11,70,40,000/-.

19. Besides this, a notice imposing penalty under Section 271(1)(c) of the Act was also issued, and interest was levied under Sections 234B and 234C of the Act.

20. Aggrieved, the respondent/assessee preferred an appeal with the CIT(A). The CIT(A), *via* order dated 16.03.2007, deleted all four additions made by the AO.

20. As noticed hereinabove, insofar as the respondent/assessee's contention with regard to the validity of the reassessment proceedings was concerned, the same was rejected by the CIT(A).

21. As noticed right at the outset, both the appellant/revenue as well as the respondent/assessee preferred appeals against the CIT(A)'s order dated 16.03.2007.

22. Clearly, the appellant/revenue's appeal was with regard to the merit of the additions that had been deleted by the CIT(A), while the respondent/assessee had preferred an appeal to agitate the contention concerning the legality of triggering reassessment proceedings against it.

23. The Tribunal, *via* the impugned order, dismissed the appeal of the appellant/revenue and allowed the appeal of the respondent/assessee.

24. It is against this backdrop that the appellant/revenue has preferred the above-captioned appeals.

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25. Mr Sunil Agarwal, learned senior standing counsel, who appears on behalf of the appellant/revenue, says that a substantial question of law arises for consideration of this court, which is, that merely because certain issues and additions were considered during the block assessment proceedings, which were deleted by the appellate authority on technical grounds, the same, could not form the basis for triggering reassessment proceedings.

26. Mr Agarwal says that the AO had adopted the correct approach for triggering reassessment proceedings, based on the issues which had arisen during the block assessment proceedings, as there is, in law, no impediment in adopting such an approach. In this regard, Mr Agarwal relied upon a judgment rendered by the Supreme Court in ***ACIT v. Hotel Blue Moon***, [2010] 188 Taxmann 113 (SC).

27. Dr Rakesh Gupta, who appears on behalf of the respondent/assessee, on the other hand, contends to the contrary.

28. In our view, this aspect of the matter need not detain us since both the CIT(A) and the Tribunal have dealt with the matter on merits, as well.

29. Insofar as the merits of the matter are concerned, the Tribunal has, after perusing the record, sustained the view taken by the CIT(A) qua all four additions.

30. The relevant observations *qua* the merits have been made by the Tribunal in paragraphs 7 and 8. For the sake of convenience, the same are extracted hereafter:

> *"7. Having heard the arguments at length, we have perused the record. There is no dispute insofar as the facts pleaded on either side. Originally under the partnership Deed dated 02.07.1999, partnership was constituted with four partners and Deed was revised on 22.11.1999 with the addition of another partner. As per clause 4.3 of the Partnership Deed, while mentioning*

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Signing Date:15.09.2023 17:56:18

the capital contribution of each partner, partners were allowed two years time in bringing their capital contribution. As could be seen from Page No. 465 of the Paper Book in balance sheet as on 31.03 .2000, capital introduced by each partner to the tune of Rs.2,57,90,000/- was mentioned. The business was commenced on 26.092000. Search was conducted on 26.06.2002 and block assessment of the firm as well as five partners was framed on 27.02.2004. Copy of the Block Assessment order dated 27.02.2004 is at page Nos 471 to 480 of the paper book. In the block assessment, the aspects of introduction of the capital by the partners and the acquisition of the property and the difference of Rs.4 lacs in respect of the unsecured loans in closing and the opening balances and also the brokerage payment came for consideration. No addition was made on account of brokerage payment or the difference in the unsecured loans shown in opening and closing balances. However, considering the introduction of capital and value of the property, AO made an addition at Rs.9.04 crores. Matter was carried in appeal and the Ld. CIT(A) vide order dated 24.12.2004 deleted the addition, holding that in the absence of any material found during the search in relation to the property, the addition cannot be sustained. These observations of the Ld. CITCA) in that order dated 24.12.2004 in Appeal No. DEL/CIT(A)-2/03-04/235 are confirmed by a Coordinate Bench of this Tribunal in IT(SS) No. 122/De1/2005 by way of order dated 03.04.2017. All these facts ·are verifiable from record.

8. Now the question is whether the AD can record his reasons to believe that income had escaped assessment, basing on the issues that are already considered in the block assessment proceedings. A reading of the assessment order dated 27.02.2004 clearly established that vide page No. 2 & 3 thereof the AD considered the issue of capital contribution by the partners. The addition of Rs. 9.04 crores made by the AO on consideration of the capital contribution of the partner and the difference in the value of the property was deleted by the Ld. CIT(A) and confirmed by the Tribunal. Further, even in the impugned order, the Ld. CIT(A) noted that in the block assessment the evidence in support of capital as well as the loans raised by the partners was furnished and was accepted without making any additions. On this score, Ld. CITCA) vide paragraph No.5.6 of his order, held that the addition has to be deleted. Further, in view of the decisions reported in India Rice Mills 218 ITR 508 (All.), Bharat Engineering 83 ITR 187 (SC), and P. Mohankala 291 ITR 278 (SC) introduction of capital by partners credited in the firm's accounts is not taxable in the hands of the firm, particularly when the amounts so credited were prior to the commencement of firm's business. Further, in respect of the discrepancies in loans, the Ld. CIT(A), on verification of record found that four payments were made to a tune of Rs. 4 lacs during the previous year relevant to 2001-02 and during the block assessment the

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Signing Date:15.09.2023 17:56:18

evidences produced on this aspect were accepted. In respect of the alleged brokerage, Ld. CIT(A) recorded the finding that, as a matter of fact, an amount of Rs. 2.25 lacs @ 1 % on the sale consideration of Rs. 2.25 crores was paid by way of cheque No. 488533 drawn on Union Bank of India, Cannaught Place, New Delhi and the said cheque was encashed on 22.12.2006. However, since the business of store proposed by the firm had not started, the brokerage was debited to the Land & Building A/c but not to the Profit & Loss A/c. On the face of this record of facts basing on which the Ld. CITCA) returned his findings, we are in agreement with such findings that the addition of Rs. 4.5 lacs is liable to be deleted. For these reasons, we find that the deletion of all the four additions by the Ld. CITCA) is perfectly justified and does not warrant any interference."

31. Having examined the record, we find that the Tribunal has, rightly, sustained the view of the CIT(A). A perusal of the proposed question of law would show that the appellant/revenue has instituted these appeals to agitate that aspect of the matter which relates to the validity of triggering reassessment proceedings, because some of the issues and additions involved were common to the block assessment proceedings as well as the reassessment proceedings.

32. Thus, according to us, on merits, the impugned order needs no interference.

33. The appeals are accordingly closed, with the caveat that the question of law raised by the appellant/revenue is left open.

34. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

AUGUST 11, 2023

Aj

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