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

% *Decision delivered on: 25.07.2023*

\+ **ITA 862/2018**

PR. COMMISSIONER OF INCOME TAX-6,
NEW DELHI ..... Appellant

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

versus

NETWORK PROGRAMME INDIA LTD. ..... Respondent

Through: Mr Rohit Jain and Mr Aditya Vohra, 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) 2002-03.

2. The appellant/revenue, *via* this appeal, seeks to assail the order dated 17.11.2017 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

3. According to Mr Aseem Chawla, learned senior standing counsel, who appears on behalf of the appellant/revenue, the only issue which arises for our consideration is: Whether the Tribunal had erred in law, by ruling in favour of the respondent/assessee, that the reassessment proceeding was not

triggered validly, i.e., as per law.

4. The reasons to believe furnished by the Assessing Officer (AO), dated 06.09.2005, indicate that the reassessment proceeding was triggered on the following two (2) grounds :

(i) First, the respondent/assessee had not deposited the employer's and employees' contribution with the statutory authorities administering the Provident Fund and ESI fund, amounting to Rs.14,12,034/-, as per the provisions of Section 43B read with Section 36(1)(iv) of the Income Tax Act, 1961 [in short, "Act"].

(ii) Second, the assessee had written off capital work-in- progress/process amounting to Rs.1,83,14,900/- in its Profit and Loss account, during the period under consideration. In other words, according to the AO, since the petitioner had categorized the said amount as capital expenditure, it could not have been debited to the profit and loss account.

5. It is on these two counts that the AO formed a view that the respondent/assessee had enhanced its loss by Rs.1,97,26,934/-.

6. It is not in dispute that in the instant appeal, the appellant/revenue has not raised the first aspect as a ground for appeal.

7. The only issue that the appellant/revenue has raised concerns the write off carried out by the respondent/assessee of the capital work-in-progress/process *via* its Profit and Loss account.

8. Significantly, insofar as the said issue is concerned, the Tribunal, insofar as second issue is concerned, has ruled in favour of the respondent/assessee. The Tribunal returned the following findings, which are set out in paragraph 5 of the impugned order:

"*5. We have considered the rival submissions and have gone through the entire material available on record. On perusal of the reasons recorded, as reproduced above, we find that the ld. Assessing Officer has no where recorded his satisfaction that the income chargeable to tax has escaped assessment. Moreover, the reasons so recorded, further do not have any mention about the tangible material, which triggered the AO to reopen the completed assessment. The assessee had produced books of accounts before the AO in original proceedings which were test checked by the AO. It is also born out on record that specific notes to the computation of income, as reproduced above, were available on record before the Assessing Officer while completing the original assessment order. Therefore, it can hardly be said that there was any omission on the part of the assessee to produce all the material facts necessary for completion of assessment. The reasons recorded are silent as to the tangible material, whatsoever, leading the AO to form a belief of escapement. In presence of all these facts, we find that the decisions relied upon by the assessee are squarely applicable to the present case. In the present fact situation, we further lay our hands on the decision of Hon'ble Delhi High court in the case of Techman Buildwell P. Ltd. ACIT, 370 ITR 771 (Del.), wherein the Hon'ble Court has held as under :*

> *"In the present case the reasons to believe extracted above nowhere highlight what, if at all, was the material which the AO came up or became aware of subsequent to the original assessment. In other words, what triggered the AOs curiosity to impel him to re-examine the files and documents pertaining to a completed assessment is unknown. Nor does the materials placed in the assessment show that the petitioner had unjustifiably suppressed valid or relevant information which was otherwise available. The advertence to the disallowance o f a provision for an unascertained liability points to the AO indulging in what amounts to nothing but a masked review. What appears to have excited the Aos mind was that the original assessment order was not framed properly as it overlooked certain materials which led to loss o f revenue. The AO in the first instance did not perform his job properly for which the assessee cannot be faulted with. In Calcutta Discount Company Ltd. v. I.T.O. 41 ITR 191 the Supreme Court had pointedly observed that the assessee is required to fairly disclose what is expected of him the primary facts while submitting the returns. It is up to the AO to draw the necessary inferences. In the present case the Aos omission appears to have been the sole basis for issuing the reassessment notice and consequently proceeding to make the impugned demand.*
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> *In the light of the above discussion this petition has to succeed. The impugned notice, dated 20.3.2012 and the demands arising*

> *consequent to it through the notice dated 03.10.2012 and 09.11.2012 are hereby quashed."*
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> *In view of the above discussion, we find merit in the legal grounds raised by the assessee against the validity of re-opening of assessment. Accordingly, the notice issued u/s. 148 of the Act is held as invalid, thereby quashing the consequential assessment u/s. 147 of the Act. Hence, the grounds on merits of addition become academic in nature and we need not to adjudicate the same. We, therefore, direct the AO to delete the addition of Rs.1,83,14,900/- only, which is under challenge in this appeal before us.*
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> [Emphasis is ours]

10. A careful perusal of the record would show that the Tribunal ruled in favour of the respondent/assessee for the following reasons:

(i) First, the AO had not recorded his satisfaction that income chargeable to tax had escaped assessment.

(ii) Second, the reasons recorded did not advert to any tangible material which had triggered the reassessment proceeding.

(iii) Third, the respondent/assessee had produced its books of accounts before the AO, which were tested.

(iv) Fourth, the note appended to the computation of income adverted to the reason why capital work-in-progress/process had been expensed out, i.e., debited, to the Profit and Loss account.

11. It appears that the only reason that the reassessment proceeding was triggered, was on account of an audit objection.

12. In our view, the approach adopted by the Tribunal cannot be found fault with.

13. The respondent/assessee had made full disclosure relating to why it had debited the expenses incurred by it, i.e., on software development for business purposes, in the note appended to the computation of income in the

return of income filed *qua* the relevant AY.

14. For the sake of convenience, the note appended to the computation of income, which the respondent/assessee would have considered prophylactic at the relevant point in time , is extracted hereafter:

> "*2. The cost incurred on certain marketable software products under developments were brought forward from previous as capital WIP. Due to uncertainty in revenue which could be realized in future from marketing such products, the management has charged off to P&L account. Since the amount is for software developed for business purpose is of revenue nature, the same is being claimed as detection."*
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> [Emphasis is ours]

15. There is no dispute about the fact that the original assessment was completed under Section 143(3) of the Act, *via* order dated 24.04.2005.

16. Given this factual position, we are in agreement with the view taken by the Tribunal, that this was a case of change of opinion and, therefore, the reassessment proceeding could not have been triggered merely on the basis of audit objection, without any fresh tangible material.

16. According to us, no substantial question of law arises for our consideration.

17. The appeal is, accordingly, closed.

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

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

JULY 25, 2023
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