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

% *Date of decision: 27.09.2023*

+ **ITA 557/2023**

PEPSICO INDIA HOLDING PVT LTD Appellant

Through: Mr Deepak Chopra, Advocate.

versus

COMMISSIONER OF INCOME TAX Respondent

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

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MR JUSTICE GIRISH KATHPALIA

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

RAJIV SHAKDHER, J.: (ORAL)

CM APPLs. 50306-07/2023

1. Allowed, subject to just exceptions.

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2. This appeal concerns Assessment Year (AY) 2013-14.

3. *Via* the instant appeal, the appellant/assessee seeks to challenge the order dated 12.05.2023, passed by the Income Tax Appellate Tribunal [in short "Tribunal"].

4. Mr Deepak Chopra, learned counsel, who appears on behalf of the appellant/assessee, says that there are two issues which arise for consideration in the instant appeal:

(i) First, whether an assessment order could have been passed in the



name of Aradhana Foods and Juices Pvt. Ltd., which ceased to exist upon its amalgamation with the appellant/assessee.

(ii) Second, whether the Tribunal was right in sustaining the disallowance of expenses claimed at an ad-hoc rate of 2%.

5. In this context, it is pointed out that the Assessing Officer (AO) had ordered a disallowance @ 10%, which was scaled down by the Commissioner of Income Tax (Appeal) [CIT(A)] to 2%.

6. Since the first issue was not raised before the Tribunal, Mr Chopra says that it would serve the interest of justice if the court were to confine the matter to the second issue and remand the said issue to the AO for examining the underlying material based on which miscellaneous expenses were claimed by the appellant/assessee.

7. According to Mr Chopra, the *ad hoc* disallowance of miscellaneous expenses, as sustained by the CIT(A), does disservice to the appellant/assessee's cause as it has in its possession the relevant material, which it was never called upon to produce by the AO.

7.1 Mr Chopra emphasizes that the appellant/assessee had produced the books of accounts and other documents which were sought for by the AO.

7.2 It is stated that since bills and vouchers were not sought for, the same were not produced.

8. We put this aspect to Mr Aseem Chawla, learned senior standing counsel, who appears on behalf of the respondent/revenue, that if we were to remand the matter to the AO, it would perhaps serve the interest of the appellant/assessee as well as the respondent/revenue.

8.1 Mr Chawla agrees that this may be the best course of action, given the evidence that was produced before the AO.



9. Accordingly, with the consent of counsel for the parties, the impugned order is set aside.
10. The matter is remanded to the AO so that he can call upon the appellant/assessee as to place before him the relevant material in support of the miscellaneous expenses claimed by it.
11. We may note that the appellant/assessee had claimed Rs.1,42,53,40,000/- towards miscellaneous expenses. The AO, after adjusting provision for inventory loss amounting to Rs.3,31,09,559/-, had disallowed 10% of the remaining amount, which as indicated above was reduced to 2% by the CIT(A).
12. The appeal is disposed of, in the aforesaid terms.
13. Needless to add, the AO will pass a speaking order, after factoring in the evidence placed before him.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

SEPTEMBER 27, 2023 / tr