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

% *Date of Decision: 29.03.2023*

\+ **ITA 193/2023**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2 ..... Appellant

Through: Mr Sanjay Kumar, Sr Standing Counsel with Ms Easha Kadian, Adv.

versus

KKM MANAGEMENT CENTRE PVT. LTD. ..... Respondent

Through: Mr Rohit Jain with Mr Aniket D Agrawal and Mr Samarth Chaudhari, 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):

CM Appl.15569/2023*[Application filed on behalf of the appellant seeking condonation of delay of 240 days in filing the appeal]*

1. This is an application filed on behalf of the appellant/revenue seeking condonation of delay in filing the appeal.

2. According to the appellant/revenue, there is a delay of 240 days.

3. Mr Rohit Jain, who appears on behalf of the respondent/assessee, does not oppose the prayer made in the application.

4. The delay is, accordingly, condoned.

5. The application is disposed of, in the aforesaid terms.

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

7. The appellant/revenue has assailed the order of the Income Tax Appellate Tribunal [in short, the "Tribunal"] dated 14.10.2021, which concerns not only AY 2013-14, but also AY 2014-15.

8. The short issue which arose for consideration before the statutory authorities was whether cost incurred by the respondent/assessee towards personnel who were seconded from another entity i.e., Godfrey Philips India Ltd. [hereafter referred to as, "GPI"] could be allowed as deduction.

9. The record reveals following undisputed facts:

(i) First, the respondent/assessee entered into a Secondment Agreement ["SA"] dated 30.05.2011 with GPI.

(ii) Second, the respondent/assessee had paid Rs.14,33,55,806/- to GPI on cost to company basis, without any mark-up.

(iii) Third, the respondent/assessee had earned professional fee amounting to Rs.22,74,50,000/- by utilizing the services of seconded employees, out of which, approximately, Rs.17 crores, has been earned from GPI alone.

(iv) Fourth, the seconded employees rendered professional services to not only GPI, but other group companies as well, in the form of consultancy and advisory services.

(v) Fifth, GPI and the respondent/assessee were operating from the very same premises and were sharing certain expenses, which included the rent payable for the premises, electricity charges etcetera.

10. It is in the backdrop of these facts that the Assessing Officer (AO) examined the matter.

10.1 The AO, *via* the order dated 18.03.2016 passed under Section 143(3) of the Income Tax Act, 1961 [in short, the "Act"], concluded that the SA dated 30.05.2011 was not genuine.

10.2 Based on his conclusion, the AO added 50% of the total secondment cost borne by the respondent/assessee to its income. The sum added to the respondent/assessee's income is Rs.7,16,77,903/-.

11. Being aggrieved by the decision of the AO, the respondent/assessee carried the matter in appeal to the Commissioner of Income Tax (Appeals) [in short, "CIT(A)"].

11.1 The CIT(A), *via* the order dated 08.02.2018, ruled in favour of the respondent/assessee. The CIT(A), while reaching his conclusion that the expenses were amenable to deduction as claimed, made the following observations, which to our minds, are findings of fact:

> *"4.3.3 The submissions made by the assessee, case laws cited and the assessment order has been considered. In the assessment order the AO has observed that the secondment agreement is not a genuine agreement and seconded employees are not wholly and exclusively working for the appellant and also held that the appellant is not the only real and economic employer of these secondees. The reasons given by the AO for arriving at the said conclusion is not convincing. In the submission filed by the appellant it has been established that the appellant for commencing its operation as the group corporate center to provide management consultancy services, has in the previous year relevant to the AY 2011-12, took on secondment employees having expertise in the field of consultancy and advisory from M/s. Godfrey Phillips India (P) Ltd. ('GPI'", vide agreement dated 30.05.2011. It is also submitted by the appellant that the seconded employees were originally employed in the flagship group company, GIP, and then seconded to the appellant on cost to company basis, without any mark-up and the entire cost of these employees was cross-charged by GPI.*
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> *In terms of the aforesaid agreement, the appellant, in the previous year relevant to the assessment year under consideration, made total payment of Rs.14,33,55,806 to GPI, towards salary to employee(s) taken on secondment. As against the salary so paid to the seconded employee, the appellant received professional fee aggregating to Rs.22,74,50,000 for*

> *providing management consultancy and advisory services. It has also been submitted that TDS has been deducted on the payment made to GPI. In view of the submission filed by the appellant the appeal on this ground is Allowed."*

12. Being aggrieved by the order passed by the CIT(A), the appellant/revenue carried the matter in appeal before the Tribunal. The Tribunal, *via* the impugned order, sustained the order of the CIT(A).

13. Mr Sanjay Kumar, learned senior standing counsel, who appears on behalf of the appellant/revenue, says that the AO had rightly disallowed 50% of the cost, since services were rendered not only to GPI but also other group companies.

13.1 It is thus, Mr Kumar's submission that the reasoning and conclusion arrived at by the CIT(A) and the Tribunal require to be reversed.

14. Mr Rohit Jain, who appears on behalf of the respondent/assessee, on the other hand, drew our attention to the fact that concurring findings of fact have been returned by two forums. Mr Jain emphasizes that the appellant/revenue has lost both before CIT(A) as well as the Tribunal and the orders passed by both the CIT(A) as well as the Tribunal are reasoned and based on appreciation of material placed on record.

15. Having heard the counsel for the parties and perused the record, we are of the view that no substantial question of law arises for our consideration. The reasons why we have reached this conclusion are the following:

15.1 Concededly, the SA, as noted above, was executed on 30.05.2011. The arrangement between GPI and the respondent/assessee has continued to operate since AY 2011-12. The appellant/revenue, up until the AY in issue, (i.e., AY 2013-14) has not raised any red flag with regard to the said

arrangement.

15.2 It is also not disputed that the respondent/assessee has utilized the services of the personnel which were deployed by it on secondment for according professional services to GPI as well as other group companies.

15.3 There is no dispute raised before us that the income earned by the respondent/assessee on account of professional services rendered by the employees who were deployed on secondment basis, has been offered to tax.

16. Therefore, to our minds, for the appellant/revenue to raise this issue when the arrangement has been in place for a substantially long period of time lent's uncertainty to an established business arrangement.

17. Although we are conscious of the fact that the principles of *res judicata* do not apply to income tax proceedings, there is another principle which is equally well-entrenched, which is, the principle of consistency. [See ***Radhasoami Satsang v. Commissioner of Income Tax***[1] (1992) 193 ITR 321].

18. That apart, in this case, findings of fact have been returned both by the CIT(A) and the Tribunal; none of which appear to be perverse. Thus, while exercising powers under Section 260A of the Act, we would not like to disturb the same. Clearly, no substantial question of law arises for our

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[1]**16.** We are aware of the fact that strictly speaking res judicata does not apply to income tax proceedings. Again, each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

17. On these reasonings in the absence of any material change justifying the Revenue to take a different view of the matter — and if there was no change it was in support of the assessee — we do not think the question should have been reopened and contrary to what had been decided by the Commissioner of Income Tax in the earlier proceedings, a different and contradictory stand should have been taken. We are, therefore, of the view that these appeals should be allowed and the question should be answered in the affirmative, namely, that the Tribunal was justified in holding that the income derived by the Radhasoami Satsang was entitled to exemption under Sections 11 and 12 of the Income Tax Act of 1961…"

consideration.

19. The appeal is, accordingly, closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 29, 2023/pmc