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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **INCOME TAX APPEAL No. 701/2017 and CM No.30647/2017**
INCOME TAX APPEAL No. 702/2017 and CM No. 30648/2017

Date of decision: 21st August, 2018.

ARADHANA FOODS AND JUICES PVT. LTD..... Appellant
Through: Mr. Deepak Chopra, Ms. Rashmi
Chopra, Mr. Rashi Khanna and Mr. Yojit
Pareek, Advocates.
versus

COMMISSIONER OF INCOME TAX Respondent
Through: Mr. Zoheb Hossain, Sr. Standing
Counsel & Mr. Deepak Anand, Jr. Standing
Counsel for Revenue.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

Above captioned appeals preferred by Aradhana Foods and Juices Private Limited ('appellant-assessee' for short) under Section 260A of the Income Tax Act, 1961 (Act, for short), challenge the order dated 5th June, 2017 of the Income Tax Appellate Tribunal (Tribunal, for short) in ITA No. 2427/Del/2011 filed by the assessee and ITA No. 2340/Del/2011 filed by the Revenue for the Assessment Year 2007-08.

2. The Tribunal by the impugned order has remanded four issues, namely, disallowance of operating expenses of Rs. 8,72,60,100/-; disallowance under Section 40A(2)(b) of Rs.10,61,30,515/-; disallowance on account of unverified fixed assets of

Rs.2,45,00,000/-; and disallowance of depreciation of Rs.36,75,000/-, to the board of the Assessing Officer for fresh adjudication.

3. Learned counsel for the appellant-assessee submits that they are not disputing and challenging the order of remand in respect of operating expenses, but would challenge the order of remand in respect of disallowance of unverified purchases from related parties under Section 40A(2)(b) of the Act, disallowance of unverified fixed assets and disallowance of depreciation. It is submitted that the order of remand on the said questions and issues was not necessary as entire facts and details were available on record. It is also submitted that the Tribunal has incorrectly and erroneously recorded that the appellant-assessee had not produced books of accounts and our attention was drawn to the order sheet entry dated 10th December, 2009 by which the appellant-assessee was directed to produce books of accounts relating to the manufacturing units under the heads; (a) ingredients purchased and consumed, etc., (b) quantity of different products manufactured, distributed and (c) goods despatched to different regions. Other Books of Accounts and documents were produced for verification. It is submitted that voluminous evidence and papers going into 536 pages were produced before the Assessing Officer. Most of these papers were available and filed before the Tribunal.

4. The present appeals were admitted for hearing by a Division Bench of this Court vide order dated 1st December, 2017 on the following substantial question of law:-

“Did the Income Tax Appellate Tribunal fall into error in deleting the additions with regard to each of the four years in respect of which substantial relief has been granted by the Commissioner of Income Tax (Appeals) in the circumstances of these cases?”

5. Earlier the Division Bench while issuing notice in the appeals vide order dated 25th August, 2017 had directed that the proceedings before the Assessing Officer pursuant to the order of remand shall remain stayed.

6. To correctly reflect on the issue raised, with the consent of the parties we have modified the substantial question of law as framed and the same would read as under:-

“Whether the Tribunal was correct in remanding the issue of disallowance of purchases made from related parties, disallowance of unverified fixed assets, and depreciation on bottles and crates to the Assessing Officer for a fresh adjudication.”

7. The Assessing Officer vide assessment order dated 30th December, 2009 had made four separate and specific additions on account of operating expenses, unverified purchases from related parties, unverified fixed assets and had partially disallowed the claim for depreciation. Paragraph 2 of the assessment order specifically records that the books of accounts were not produced during the course of the assessment proceedings. Disallowance on account of operating expenses was made observing that the assessee had not produced books of accounts and, therefore, 30% of the expenses incurred should be disallowed being unverified, unreasonable and excessive. Operating expenses of Rs.56.93 per case, it was observed

was fairly high. The Commissioner of Income Tax (Appeals) had reduced the disallowance to 10%. As noticed above, the appellant-assessee is not disputing the remand to the Assessing Officer on the question of operating expenses. The issue of operating expenses, we would record, has direct nexus and is connected with the second addition, i.e., unverified purchases made from related parties by invoking Section 40A(2)(b) of the Act.

8. The assessment order records that the appellant-assessee was engaged in the business of manufacture and sale of aerated and non-aerated beverage products as well as trading and sale of the said products, which were manufactured or procured from step-up holdings and fellow subsidiaries. The Assessing Officer noted the figures relating to cost of production of aerated and non-aerated products, to observe that the manufacturing cost per case was Rs.38.70, whereas the cost of purchase from related parties for re-sale/trading was Rs.137.44 per case, i.e., 355% more than the manufacturing cost. He noticed that these purchases to the tune of Rs.18,37,31,000/- were from step-up holding and fellow subsidiaries. Thus the transaction was not at arm's length. Accordingly, he held that the appellant-assessee had reduced his liability by resorting to purchases from related parties at highly inflated prices. The purchase price was computed at Rs.58.05 per case and addition of Rs.10,61,30,515/- was made.

9. The Commissioner of Income Tax (Appeals) had deleted the addition observing that the calculations made by the Assessing Officer were incorrect for he had not included the indirect cost,

which if added, would reflect that the appellant had incurred manufacturing cost of Rs.112.23 approximately per case and not Rs.38.70 per case. Thus, the method of calculation adopted by the Assessing Officer was incorrect.

10. During the course of hearing before us, it was submitted by the Revenue with justification that the direction for remand in respect of unverified purchases from related parties and the operating expenses were interconnected and interlaced, as indirect cost would include operating expenses. In view of the above, we do not find any error in the order of remand on the said aspect.

11. With regard to disallowance of Rs.2.45 crores, out of Rs.24,58,35,000/- paid to acquire fixed assets, the Assessing Officer had observed that the appellant-assessee had purchased bottles and tetra packs for Rs.6,05,53,607/- on which depreciation @ 50% had been claimed. The appellant-assessee had also purchased visicoolers, but no details were produced and filed. He also referred to the fact that the books of accounts alongwith the bills, vouchers, etc. were not produced.

12. The Commissioner of Income Tax (Appeals) had deleted the addition stating that he had called for the assessment records, which were perused and it was noticed that the appellant-assessee had filed about 536 pages of documents, which had names and addresses of parties from whom purchases above Rs.10 lacs were made. Sample copies of invoices were filed.

13. In support, learned counsel for the appellant-assessee has also drawn our attention to the assessment order to contradict the assertion that vouchers and bills were not produced before the assessing officer as the assessment order records that, the assessee vide reply dated 21st December, 2009 had furnished copies of vouchers for purchase of visicoolers on sample basis. The suppliers were Voltas Limited and Western Air Conditioning and Refrigeration Private Limited. Details of the retail shop and dealership had been provided.

14. We find and observe that the Tribunal has not specifically considered and dealt with the contention and pleas raised by the appellant/assessee while remanding the case on the two aspects relating to addition to fixed assets and purchases of bottles etc. Observation of the Tribunal that the appellant-assessee had not produced books of accounts is seriously disputed and contested by the appellant-assessee. It is stated and claimed that they had produced books of accounts, except books of accounts relating to the manufacturing units, which could not be produced due to Telangana agitation. Invoices and details relating to purchases etc. were produced. The issue would be whether and what documents and papers in respect of the purchases were produced before the Assessing Officer as held by the Commissioner of Income Tax (Appeals) or the findings and observations of the Assessing Officer were justified.

15. Keeping in view the aforesaid position and as the issue and the contention raised by the appellant-assessee has not been specifically dealt with and examined by the Tribunal, we set aside the impugned

direction of remit on the third/fourth aspect to the Assessing Officer and would require the Tribunal to examine the said contention afresh. While examining the said question, the papers and documents produced on record by the appellant-assessee before the Assessing Officer would be examined and considered. We make it clear that in case the Tribunal feels and concludes that they cannot decide the question and issue in absence of details and particulars, an order of remand may be passed. Our aforesaid decision would equally apply to the question of claim of depreciation on bottles and tetra packs, which were disallowed by the Assessing Officer.

16. In view of the aforesaid discussion, the question of law is partly answered in favour of the appellant-assessee and partly answered in favour of the respondent-Revenue. We uphold the order of remand passed by the Tribunal in respect of disallowance of unverified purchases from related parties. We, however, set aside the order of the Tribunal remanding the matter to the Assessing Officer on the question of unverified fixed assets and depreciation. The said issue/question would be examined afresh and in case and only if the Tribunal finds that the said question cannot be answered on the basis of papers and documents filed before the Assessing Officer, an order of remand may be passed.

17. The appeals are accordingly disposed of, without any order as to costs. Stay order is vacated.

SANJIV KHANNA, J.

**AUGUST 21, 2018
MR/VKR**

CHANDER SHEKHAR, J.