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

Decided on 22nd April, 2015

+ ITA 273/2015 & C.M. No. 7357/2015 (Delay)

COMMISSIONER OF INCOME TAX-I Appellant

Through Mr. Rohit Madan, Mr. Ruchir Bhatia
and Mr. P Roy Chaudhury, Advs.

Versus

M/S CAIRS COMPUTER AIDED INFORMATION & SERVICES
PVT LTD Respondent

Through None

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE R.K.GAUBA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. The revenue is aggrieved by the order of the Income Tax Appellate Tribunal (ITAT). It contends that the assessee's claim for depreciation for assessment year (AY) 2009-10 was, in the circumstances of the case, wrongly permitted. The revenue's appeal against the order of the CIT(Appeals) was rejected by the impugned order.

2. The assessee provides online lottery services on behalf of Nagaland Government and for this purpose it had appointed distributors and sub-

distributors. The business model, *inter alia*, included provision of gaming solution which enabled the customer to access the scheme. In its return for AY 2008-09, the assessee claimed depreciation to the extent of ₹72,16,610/-. The AO disallowed this on the ground that the assessee was unable to demonstrate that the machinery claimed to have been used by it was in fact owned or acquired by assessee for its business. The assessee's contention was that the machinery was provided to sub-distributor at that site for use by the customers.

3. The assessee's appeal to the CIT (Appeals) was allowed, who took note, *inter alia*, of two facts i.e. for AY 2006-07 and 2007-08, depreciation had been allowed in scrutiny assessment and that for AY 2009-10, in the reply to queries under Section 133(6), one of the assessee's sub-distributors had confirmed that the machinery on the site was provided. The revenue's appeal was rejected by the ITAT. The impugned order holds as follows :

“6. We have heard rival contentions and perused the material available on record, Following facts clearly emerge :

a. The assets qua which the depreciation is claimed were not purchased during this year, but in earlier years. Purchases and depreciation thereon have been allowed in earlier years.

b. It is undisputed that they were purchased in earlier years i.e. in A.Y. 2006-07 and 2007-08 besides depreciation was allowed and the assessments were framed u/s 143(3).

c. The impugned assets became part of the block of assets and any question in subsequent year about the ownership is meaning less, therefore, we are unable to sustain the finding of the assessing officer that assets were not owned by the assessee.

6.1. Adverting to the issue about user of impugned assets towards the assessee's business of online lottery the assessee has demonstrated the use of the assets along with the sub-distributor. The subsequent upgradation of the software and machinery etc. though may be with the sub distributor the fact remains that the assessee's assets were also used. It is not the case of the revenue that the upgradation expenditure was not incurred by the sub-distributor and it has been claimed by the assessee. This is so because in that case assessing officer ought to have disallowed it. Under these circumstances we are of the view that the impugned assets were used for the purpose of the assessee's business, therefore, depreciation is to be allowed. We find force in the argument of ld. Counsel for the assessee that assuming worst against the assessee the assets being the part of the existing block of assets on such presumption also become assets already part of the block of assets kept in readiness for use of the business, the depreciation is to be allowed. In view of above we find no merit in revenue's appeals."

4. This Court has considered the submissions. It is a matter of record that for AY 2006-07 and 2007-08, the assessments were completed under Section 143(3) after due enquiries were conducted by the AO. There is nothing on the record to suggest that those were either erroneous or based on premises which did not disclose relevant details. The revenue's attempt in reopening the assessment of 2009-10, by relying upon statement of one of the sub-distributors also failed because the said concern, M/s Best & Company, in fact confirmed the assessee's contention. Given the factual nature of these findings, the Court is of the opinion that no substantial question of law arises for consideration.

5. For the previous years, we have affirmed the order of the ITAT (*in ITA No. 238/2015 Commissioner of Income Tax-I vs. M/s Cair's Computer*

Aided Information & Services Pvt. Ltd. Decided on 13.04.2015). In view of the said order, no question of law arises to be determined.

6. The appeal and application are consequently dismissed.

S. RAVINDRA BHAT, J

R.K.GAUBA, J

APRIL 22, 2015

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