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

\+ **ITA 229/2022**

PR. COMMISSIONER OF INCOME TAX- CENTRAL -02

..... Appellant

Through: Mr.Zoheb Hossain, Sr.Standing Counsel for the Revenue with Mr.Vipul Agrawal and Mr.Parth Semwal, Advocates.

versus

SHRI KRISHAN LAL MADHOK ..... Respondent

Through: Mr.P.D.Gupta, Sr.Advocate with Mr.Atul Gupta, Advocate.

\+ **ITA 230/2022**

PR. COMMISSIONER OF INCOME TAX- CENTRAL -02

..... Appellant

Through: Mr.Zoheb Hossain, Sr.Standing Counsel for the Revenue with Mr.Vipul Agrawal and Mr.Parth Semwal, Advocates.

versus

SHRI KRISHAN LAL MADHOK ..... Respondent

Through: Mr.P.D.Gupta, Sr.Advocate with Mr.Atul Gupta, Advocate.

% Date of Decision: 21st September, 2022

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

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JUDGMENT

MANMOHAN, J (Oral):

1. Present income tax appeals have been filed challenging the order dated 03rd August, 2021 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 3917/Del./2017 & 6268/Del./2017 for the Assessment Year 2006-07 and ITA No. 6648/Del./2017 & ITA No 6269 /Del./2017 for the Assessment Year 2007-08. The relevant portion of the impugned order is reproduced hereinbelow:-

"24. Be that as it may, the question which needs to be highlighted is that even assuming that the statement of the assessee is paramount and sacrosanct, then there is no denial by the revenue authorities that the assessee has honoured his statement and offered Rs.2,23,68,000/- in his return of income for A.Y 20078-08 and has paid taxes thereon. In all his submissions made during the course of assessment proceedings and highlighted by us elsewhere, the assessee was constantly stating that this peak credit was calculated by the tax authorities and at the behest of the tax authorities the assessee offered the same in his income for A.Y 2007-08 and paid taxes thereon.

25. Nowhere the Assessing Officer has demolished this claim of the assessee which means that the Assessing Officer has inherently accepted the contention of the assessee that the disclosure was at the behest of the tax authorities and calculation of peak credit was also at the behest of the tax authorities.

26. We have carefully examined the computation of income for A.Y 2007-08 and under the head 'income from other sources' at item L- "Other Income", the assessee has shown income of Rs.2,23,68,007/-. Once the assessee has returned the undisclosed income and paid taxes thereon, in our considered opinion, there should not be any quarrel to bifurcate the disclosed amount in two A.Ys when the tax rate in both the A.Ys is the same and there is no loss to the revenue. We are of the considered view that the revenue authorities should desist from such litigation.

27. Considering the facts of the case in totality, as discussed hereinabove, as culled out from the records, and the relevant documentary evidences, we do not find any merit in bifurcating the

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income in two A.Ys when the assessee has paid taxes in A.Y 2007-08. Making the addition of same income in two A.Ys definitely amounts to double taxation. We, accordingly direct the Assessing Officer to delete the addition in A.Y. 2006.07 amounting to Rs.2,05,50,550/- and Rs.18,58,311.00 in F.Y 2007-08 also. Accordingly, the appeals of the assessee in ITA Nos. 6269 and 6268/DEL/2017 are allowed."

2. Learned counsel for the Appellant states that the ITAT has erred in deleting the addition of Rs.2,05,50,545/- and Rs.18,58,311/- under Section 69 of the Income Tax Act, 1961 ('the Act') on account of peak balance pertaining to Financial Year 2005-06 (Assessment Year 2006-07) and Financial Year 2006-07 (Assessment Year 2007-08) respectively, in the bank account maintained by assessee with HSBC Geneva. He states that the ITAT has erred in holding that there is no loss to revenue as assessee has shown the said income for Assessment Year 2007-08 and paid taxes on such undisclosed income. He contends that the ITAT has erred in holding that the issue of bifurcating the undisclosed amount in two Assessment Years i.e. Assessment Years 2006-07 and 2007-08 does not arise for the reasons that the tax rates in both the assessment years are the same. He submits that the ITAT acted contrary to the settled position of law that income of any particular year has to be taxed in the year in which said income accrues/is received. In support of his submission, he relies upon the judgment of the Supreme Court in ***Commissioner of Income Tax vs. British Paints India Ltd., AIR 1991 SC 1338***, wherein it has been held as under:-

"19. Any system of accounting which excludes, for the valuation of the stock-in-trade, all costs other than the cost of raw material for the goods in process and finished products, is likely to result in a distorted picture of the true state of the business for the purpose of computing the

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chargeable income. Such a system may produce a comparatively lower valuation of the opening stock and the closing stock, thus showing a comparatively low difference between the two. In a period of rising turnover and rising prices, the system adopted by the assessee, as found by the Tribunal, is apt to diminish the assessment of the taxable profit of a year. The profit of one year is 'likely to be shifted to another year which is an incorrect method of computing profits and gains for the purpose of assessment.Each year being a self-contained unit, and the taxes of a particular year being payable with reference to the income of that year, as computed in terms of the Act, the method adopted by the assessee has been found to be such that the income cannot properly be deduced therefrom. It is, therefore, not only the right but the duty of the Assessing Officer to act in exercise of his statutory power, for determining what, in his opinion, is the correct taxable income."

3. *Per contra*, learned senior counsel for the Respondnet, who appears on advance notice, states that the sole basis for the addition is the admission in the statement recorded under Section 132(4) of the Act and the alleged sheets received from the French government under DTAC. He points out that the Additional Chief Metropolitan Magistrate has vide order dated 28th June, 2021 discharged the assessee under Sections 276C and 277 of the Act on the following ground:-

"In the present case the prosecution has failed to satisfy said ingredients. The prosecution is launched on the basis of retracted admissions. The data obtained from French Authorities is not certified as per section 78 (6) of the Indian Evidence Act. Neither the Indian Authorities nor the French Authorities verified the data from the bank in question. No bank account opening form and KYC documents is obtained during investigation. No transaction from the account of accused to the foreign account is shown. Prosecution has failed to show any link of the accused with the said bank account. Even in the case of prosecution proceeds further on the basis of admitted documents on record, accused cannot be convicted merely on the basis of unauthenticated and unverified printouts obtained from third party. The said documents may create suspicion against the

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> *accused but are not sufficient to proceed further by framing of charge and to force the accused to face ordeal of criminal trial. In these circumstances, the aforesaid analysis of testimonies of witnesses considering the documents available on record, it is clear that the complainant unable to make out the case and the accused is discharged for the offences u/s 276C(1) and Section 277 Income Tax Act, 1961."*

4. Having heard learned counsel for the parties, this Court is of the view that even assuming that the statement of the assessee is paramount and sacrosanct, then also there is no denial by the revenue authorities that the assessee has honoured his statement and offered Rs.2,23,68,000/- in his return of income for the Assesment Year 2007–08 and has paid taxes thereon.

5. Further, the peak credit had been calculated by the tax authorities and at the behest of the tax authorities, the assessee had offered the amount calculated by them in his income for the Assessmeng Year 2007–08 and paid taxes thereon, which return of income has been accepted by the Revenue.

6. Since the tax rate in both the Assessment Years i.e. 2006-07 and 2007-08 was same, this Court is of the view that if the present appeals are allowed and an amount of Rs.2,05,50,545/- is added to the assessee's income in the assessment year 2006-07, it would amount to double taxation, inasmuch as, the said amount is admittedly a part of the amount of Rs.2,23,68,000/- offered to taxation in the assessment year 2007-08. The learned predecessor Division Bench in ***PCIT(Central) Vs. Krishan Kumar Modi, 2021 SCC OnLine Del 3335*** has held, "*In our view of the aforesaid, the learned ITAT has rightly held that there could not be any dispute on the*

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legal proposition that the very same amount cannot be taxed twice in the two assessment years".

7. With respect to the reliance placed on the judgment in ***British Paints India Ltd.*** **(supra)** the same has no application to the facts of this case, as the said observations were made by the Supreme Court while rejecting a method of accounting adopted by the assessee which has the effect of masking the profits earned in the relevant year; artifically shifting profits to next year and thus, making it difficult for revenue to assess the profits in the relevant year and thereafter.

8. This is however, not the issue arising in the present proceedings as it is a case of one time declaration of income by the assessee. The amount offered for by assessee for taxation is also not in dispute. The dispute has arisen only with respect to the relevant assesseement year. However, the ITAT has held that the said amount was declared at the behest of the revenue and the calcualtion of the peak credit was also at the behest of the tax authorities. There is no challenge to the said finding of the ITAT in the grounds of appeal.

9. Accordingly, no substantial question of law arises for consideration in the peculiar facts of the present appeals and the same are dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 21, 2022
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