$~38

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

\+ ITA 442/2022

PR. COMMISSIONER OF INCOME TAX-1 ..... Appellant

Through: Mr. Sanjay Kumar, Senior Standing Counsel for Revenue.

versus

M/S CONWOOD MEDIPHARMA PVT. LTD. ..... Respondent

Through: Mr. Kapil Goel, Advocate.

% Date of Decision: 10th November, 2022

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

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. Present Income Tax Appeal has been filed by Revenue challenging the Order dated 27th April, 2022, passed by Income Tax Appellate Tribunal ('ITAT') in ITA No. 6460/Del/2015 for the Assessment Year ('AY') 2011-12.

2. Learned senior standing counsel for the Revenue states that the ITAT erred in upholding the order of the Commissioner of Income Tax (Appeals) ['CIT(A)'] deleting the addition of Rs. 10,20,64,174/- made by the Assessing Officer ('AO') on account of the difference in receipts as per the Assessee's bank account when compared with the books of accounts maintained by the Assessee. He states that the ITAT erred in concurring

with the CIT(A) that the AO had failed to verify the evidence produced before him and for not providing adequate opportunity for hearing to the Assessee.

3. We have heard the learned counsel for the parties. The facts of the case relevant for deciding the present appeal are as follows:

3.1. The Respondent, Assessee, is engaged in the business of equity trading, derivatives trading and real estate investment. On 29th September, 2011, the Assessee filed Income Tax Returns ('ITR') declaring an income of Rs. 42,43,39,960/-, which was revised on 14th August, 2012 at the same figure. The case of the Assessee was selected for scrutiny under Computer Aided Scrutiny Selection ('CASS') and notice was issued under Section 143(2) of the Income Tax Act, 1961 (the 'Act').

3.2. The Assessee was issued with Assessment Order dated 13th May, 2014 under Section 143(3) of the Act, *inter alia* making an addition of Rs. 10,20,64,174. After perusing the bank statement of the Assessee, the AO noted that the amount credited into the bank account of the Assessee is Rs. 59,71,35,900 whereas the receipts of the year amounts to Rs. 49,50,71,726. The AO made the aforesaid addition by holding that the difference between funds received and the source of income as per the books of accounts is not disclosed by the Assessee in its return. The AO held that the books of accounts declared by the Assessee is not reliable and thereby rejected the same.

3.3. Aggrieved by the Assessment Order dated 13th May, 2014, Assessee preferred an appeal before the Commissioner of Income Tax Appeals [CIT(A)]. The CIT(A) allowed the appeal of the Assessee vide Order dated 31st August, 2015. The CIT(A) held that addition of Rs. 10,20,64,174 is not

sustainable in view of the documentary evidences already available on record. It was further held AO failed to make any sincere effort regarding the aforesaid addition and the same was made only on the basis of doubt, suspicion, conjecture or surmises without affording proper opportunity of being heard to the Assessee which is in violation of the principles of the natural justice. The relevant findings of the CITA(A) are as follows:

> *"4.1.6. In my considered view, addition made of Rs. 10,20,64,174/- on account of amount credited in the bank account of the appellant in excess of receipt as per books of accounts is not sustainable in view of documentary evidences already available on record to substantiate the said difference. The AO has failed to make any sincere effort regarding the same and made addition only on the basis of doubt, suspicion, conjecture or surmises without affording proper opportunity of being heard to the appellant which is in violation of the principles of natural justice. Hence, considering the entire facts and circumstances of the case of the appellant, addition made by the AO is liable to be deleted."*

3.4. The Appellant Revenue preferred an appeal before the ITAT against the Order dated 13th May, 2014 of the CIT(A). The ITAT, vide the impugned Order dated 27.04.2022 concurred with the findings in the order of the CIT(A). The ITAT Para 9 of the impugned order noted that the Revenue has failed to controvert the findings of the CIT(A). The relevant finding in the impugned order is as follows:

> *"9. The learned DR for the Revenue has failed to controvert the findings of the CIT(A) in this regard. We find no merit in the issue raised vide ground of appeal no. 1. Before parting, we may also point out that no additional evidence was produced before the CIT(A) and hence there is no merit in the additional ground*

of appeal raised by the Revenue."

3.5. Thus, the ITAT and CIT(A) after perusing the evidence on record have returned a concurrent finding of fact and recorded their satisfaction with respect to the explanation furnished by the Appellant with respect to the difference in the receipts shown in the financial statements of the Assessee and the credit entries appearing in the bank account of the Assessee.

4. A perusal of the above Order dated 13th May, 2014 passed by the CITA(A) and the impugned Order dated 27th April, 2020 reveals that the ITAT and CIT (A), both fact finding authorities have concurrently held that there is no merit in the ground raised with respect to the addition of Rs. 10,20,64,174 on account of the income declared by the Assessee and the receipts as per the books of account of the Assessee. The CIT(A) in its order at paragraph 4.13 has set out the information and explanation furnished by the Assessee explaining each of the entries amounting to Rs. 10,20,64,174/- to substantiate its contention that the said amount is not exigible to tax. The CIT(A) has noted that the documentary evidence in support of the said explanation furnished by the Assessee was available on record. The ITAT while concurring with the aforesaid finding has held that the Revenue has failed to controvert the said finding of the CIT(A).

5. We are of the considered view that in view of the concurrent findings of fact, there is no substantial question of law raised in the present appeal. The Supreme Court in the case of ***Ram Kumar Aggarwal & Anr. vs. Thawar Das (through LRs), (1999) 7 SCC 303*** has reiterated that under Section 100 of CPC, the jurisdiction of the High Court to interfere with the

orders passed by the Courts below is confined to hearing on substantial question of law and interference with finding of the fact is not warranted if it involves re-appreciation of evidence. In the present appeal, the Appellant has not placed any material on record to contradict the aforesaid concurrent finding of facts returned by the ITAT and CIT(A). Thus, we see no merit in the appeal and it is accordingly dismissed.

MANMEET PRITAM SINGH ARORA, J

MANMOHAN, J

NOVEMBER 10, 2022
msh