Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 08 OF 2023

The Principal Commissioner of Income Tax, Central Circle, Panaji, Goa. ... Appellant

V e r s u s

M/s. Timblo Private Limited, Kadar Manzil, near Hari Mandir, Margao-Goa 403 601 ... Respondents
PAN : AABCT 1944 N

Ms. Amiri Razaq, Standing Counsel *for the Appellant.*

Mr. H. D. Naik, Advocate *for Respondents.*

CORAM: M. S. KARNIK &
VALMIKI MENEZES, JJ.
DATE: 19th June, 2024

ORDER (*Per M. S. Karnik, J.*)

1. The revenue is in appeal against the Judgment of the Income Tax Appellate Tribunal ('*Tribunal*', for short) dated 13.05.2012, raising the following questions of law for our consideration :

> "(i) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT erred in deleting the addition of Rs.2,28,54,314/- made on account of unexplained expenditure despite the said entry appearing in seized diary during the course of search action under Section 132 of the IT Act 1961 on 21.4.2010 and the assessee was not able to correlate

its claim that the amount of Rs.2,28,54,314/- is out of income disclosed in earlier years.

(ii) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT erred in deleting the addition of Rs. 2,00,00,000/- made on account of legal expenses despite the said entry appearing in seized diary during the course of search action under Section 132 of the IT Act 1961 on 21.4.2010.

(iii) Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT erred in accepting the assesses' version that the entries in the diary are actual expenditure incurred and some entries in the diary are mere estimation."

2. Ms. Razaq appearing for the revenue while assailing the Order of the Tribunal invited our attention to the facts. It is pointed out that a search and seizure action under Section 132 of the IT Act, 1961, ('*Act*', for short), was carried out in the case of the Assessee on 21.04.2010. Notice under Section 153A of the Income Act, 1961 dated 04.08.2010 was issued and served on the Assessee calling for return of income for the aforesaid Assessment year. The Assessee filed Return of Income on 30.09.2010 declaring total income of Rs.54,51,02.479/-. The assessee filed revised return of income on 13.12.2012 declaring total income of Rs.53,88,63.191/-. The Assessing Officer was of the opinion that the return filed on 13.12.2012 is not a valid one since as per the provisions of Section 139(5), a revised return can be filed at any time before the

expiry of one year from the end of the relevant Assessment year or before the completion of the assessment whichever is earlier and, as such, before 31.03.2012 for the relevant Assessment year. As such, the revised return was treated as non est and the assessment was completed based on the return filed on 30.09.2010. The Assessing Officer completed the search assessment under Section 153A on 31.12.2012 determining the total income of the assessee at Rs. 58,79,56,793/- for the Assessment Year 2010-11 *inter alia* making additions under two heads viz. unexplained expenditure of Rs.2,28,54,314/- and Rs. 2,00,00,000/-, the first representing general expenses and the second representing legal expenses. The Assessment year relevant for the purpose herein is Assessment Year 2010-11.

3. Assailing the common Order passed by the Tribunal dismissing the Appeal filed by the revenue as well as the Cross Appeal of the Assessee, the learned Counsel for the Appellant urged that the impugned Order is contrary to the provisions of the Act and is against the well settled interpretation of the relevant cited provisions. It is urged that the substantial questions of law set out herein above arise out of the Order of the Tribunal. Our attention is invited to the findings recorded by the CIT(A) and the Tribunal. Such findings are assailed on the ground that the same are perverse.

4. Shri Naik, learned Counsel for the Respondents submitted that the findings recorded are findings of facts which cannot be said to be perverse.

5. We have gone through the findings of the Tribunal as well as CIT(A). The Tribunal has re-produced the relevant observations and the findings of the CIT(A) in the impugned Order. So far as the ground raised by the Assessee as regards addition to the amount of Rs.2,25,54,314/- is concerned, the Tribunal has tendered a finding of fact on the basis of the materials. It held that group companies having offered income on account of unexplained expenditure for the Assessment Year 2007-08 in their respective hands totalling Rs.2,28,54,314/-, can be considered as an explanation and coupled with the fact that the department has not disproved the contention of the assessee company with any corroborative evidence. The Tribunal further observed a well reasoned Order is passed by the CIT(A). The Tribunal has further recorded that the assessee company in support of its stand has in fact filed an affidavit, the contents of which affidavit has not been disproved by the Assessing Officer and no further inquiry appears to have been carried out by the Assessing Officer. The Tribunal observed that the Assessing Officer has arrived at a belief that the contents in the said seized diary are pertaining to the instant

Assessment Year 2010-11 only on the basis of presumption. We do not find any perversity in such a finding.

6. Further as regards to the addition of Rs. 2 Crore relating to legal expenses made by the Assessing Officer, the Tribunal based on the materials on record, arrived at a conclusion that it is not discernable whether the Assessee has actually paid the said amount towards the legal expenses as no date is mentioned nor any other information can be gathered to say that the said amount of Rs. 2 Crore has been incurred towards legal expenses by the assessee company and no corroborative evidences have been brought on record by the Assessing Officer. It is further observed that the assessee company has to this effect, filed an affidavit itself, which cannot be brushed aside since the averments made in the duly sworn affidavit has not been disproved by the Assessing Officer during the course of assessment proceeding or before the CIT(A) or before the Tribunal. We find that the CIT(A) and the Tribunal has recorded findings of fact based on the materials which cannot be said to be perverse. The view is a possible one. Thus, the CIT(A) and the Tribunal have concurrently come to the conclusion that the materials on record does not justify such additions of the Assessing Officer.

7. No question of law arises. Hence, the Tax Appeal is dismissed. No costs.

VALMIKI MENEZES, J. **M. S. KARNIK, J.**