IN THE HIGH COURT OF DELHI AT NEW DELHI

ITA 8/2009

COMMIISONER OF INCOME TAX '.. Appellant Through: Mr R.D. Jolly

Versus

FORTIS HEALTH CARE LTD '.. Respondent Through: None

CORAM

HON'BLE MR JUSTICE VIKRAMAJIT SEN

HON'BLE MR JUSTICE RAJIV SHAKDHER

ORDER

20.01.2009

This is an appeal preferred by the Revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to in short as the 'Act') against the judgment dated 30.5.2008 passed by the Income Tax Appellate Tribunal (hereinafter referred to as the 'Tribunal') in ITA No.1222/Del/2005 in respect of assessment year 2001-02.

The only issue which arises for consideration in the present appeal is whether the Tribunal had misdirected itself in law in deleting addition of Rs 18 lakhs made by the Assessing Officer as income from other sources.

In order to deal with this appeal the following relevant facts are required to be noted:-

The Assessee, which is a company, was carrying out medical and clinical

research for which purpose it set up a super speciality hospital by the name of Fortis Heart Institute. An agreement dated 01.04.2000 (hereinafter referred to as 'agreement') was executed between the assessee and the sister concern, namely, Speciality Ranbaxy Limited (SRL). The Agreement envisaged that the Assessee and SRL would share expenses of maintenance of corporate office which was used by the Assessee, as well as, SRL. The maintenance expenses pertained to rent, electricity, telephone and other administrative expenses. It is not disputed that the expenses were incurred by the Assessee during the relevant period and were debited in the books of accounts under the head 'pre-operative expenses'.

SRL in terms of aforementioned agreement reimbursed a sum of Rs 18 lakhs to the Assessee towards its share of common expenses. However, at the time of reimbursing the expenses, tax at source was deducted by SRL and deposited with the Income Tax authorities. In view of TDS being deducted the Assessing Officer queried as to why the sum of Rs 18 lakhs received by the assessee ought not to be brought to tax under the head income from other sources. The assessee by a letter dated 24.12.2003 furnished its

explanation and objected to the proposed addition. Briefly, the assessee explained that Rs 18 lakhs received from SRL was a reimbursement of expenses by SRL towards sharing of cost of common services utilized by SRL. The Assessee also indicated in the said letter that they had for the purposes of reimbursement of expenses raised a debit note on SRL and, in view of the fact

that recovery had been made towards expenses incurred which relates to the

period prior to commencement of business had been credited to ‘pre-operative expenditure’ account. The Assessee conceded that the deduction of tax at source by SRL had been made by the Accountant of SRL due to oversight, even though no TDS was deductible on the said payment as no part of it had income embedded in it.

The Assessing Officer held that Assessee had received professional charges for which TDS had been deducted by SRL. With these findings the Assessing Officer concluded that sum of Rs 18 lakhs received by the Assessee from SRL during pre-operative period was to be treated as income other sources. Accordingly, the Assessing Officer made an addition of a sum of Rs18 lakhs under the head income from other sources.

The assessee being aggrieved preferred an appeal to the CIT(A). The CIT(A) by an order dated 24.12.2004 allowed the appeal with respect to the issue in hand and deleted the addition made by the Assessing Officer. The CIT(A) in its order returned a finding of fact that a reading of the agreement made it clear that the money received was for sharing of common services, and that services provided by the Assessee were purely based on reimbursement of cost on which the Assessee had incurred an equivalent amount of expenditure. The CIT(A) further held that in case, even if, it is presumed that sum of Rs 18 lakhs could be brought to tax as income from other sources then, the amount of expenditure

incurred which is equivalent to the amount received will have to be set off on account of the fact that there was a direct nexus between what was received that which was expended. The observations to this effect are found in para 2.3 of the order of the CIT(A).

The Revenue being aggrieved preferred an appeal. The Tribunal by the impugned judgment noticed the finding of fact returned by the CIT(A) in para 2.3 of her order. The Tribunal after discussing case law on the issue sustained the findings of fact that the monies received i.e., the sum of Rs 18 lakhs received by the assessee from SRL was nothing but reimbursement of expenses.

The Tribunal also sustained the view that since expenses incurred on the facilities there directly related to the monies received by the assessee from SRL, the same would have to be set off and no income would arise in favour of the Assessee.

Having heard the learned counsel for the Revenue, Mr.R.D.Jolly we are of the view that the impugned judgment of the Tribunal deserves to be upheld. Two concurrent authorities i.e., CIT(A) as well as the Tribunal have found that the money received by the Assessee from SRL was nothing but reimbursement of expenses incurred by the Assessee in respect of common services extended by the Assessee to SRL. The said authorities have also found as a fact that the expenses incurred by the Assessee are equivalent to the monies received by the Assessee from SRL and hence, no income would arise to the Assessee if the expenses are set off there being a direct nexus between the two. In view of these findings of fact we are of the opinion that no question of law, much less

a substantial question of law, has arisen for our consideration.

In the result, the appeal is dismissed.

VIKRAMAJIT SEN, J.

RAJIV SHAKDHER, J.

JANUARY 20, 2009/kk/da