

आयकर अपीलिय अधिकरण, 'बी' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH, CHENNAI**

श्री महावीर सिंह, उपाध्यक्ष एवं श्री जी. मंजुनाथ, लेखा सदस्य के समक्ष

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: **630/Chny/2017**

निर्धारण वर्ष / Assessment Year: 2012-13

Assistant Commissioner of Income-  
tax,  
Corporate Circle -1(2),  
Chennai.

M/s. Calchennai Mobile Worx P.  
v. Ltd.,  
No. 5, 5<sup>th</sup> Lane, Strahans Road,  
Otteri, Chennai – 600 012.  
**[PAN: AACCC-9900-A]**

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. S. Sridhar, Advocate

प्रत्यर्थी की ओर से/Respondent by

: Shri. P.M. Senthil Kumar, JCIT

सुनवाई की तारीख/Date of Hearing

: 16.11.2022

घोषणा की तारीख/Date of Pronouncement

: 23.11.2022

**आदेश / O R D E R**

**PER G. MANJUNATHA, ACCOUNTANT MEMBER:**

This appeal filed by the Revenue is directed against the order passed by the learned Commissioner of Income-tax (Appeals)-1, Chennai, dated 27.12.2016 and pertains to assessment year 2012-13.

2. The Revenue has raised the following grounds of appeal:

1. *"The order of the learned CIT(A) is contrary to law, facts and circumstances of the case*
- 2 *The learned CIT(A) erred in holding that out of the total consideration of Rs.5.34 crores only Rs.2.64 crores was., assessable to tax.*
  - 2.1 *The learned CIT(A ) failed to appreciate that the total consideration of Rs.5.34 crores as mentioned in the Asset Purchase Agreement (APA) had accrued to the assessee*
  - 2.2 *The learned CIT(A) failed to consider that the consideration was partly' in the form of Rs.2.64 crores in cash and partly in the form of allotment of shares in M/s. Delaware Corporation, USA and Komli Media Inc. USA*
  - 2.3 *The learned CIT(A) failed to appreciate that the purchaser M/s. Komli Inc has not given any confirmation w. r. t. the payment of consideration in the form of equity shares of M/s. Delaware Corporation and Komli Media Inc. USA as is envisaged in the APA.*
  - 2.4 *The learned CIT(A) failed to appreciate that the entire consideration whether in the form of cash or in the form of shares has to be brought to tax.*
- 3 *For these and other grounds that may be adduced at the time of hearing, it i prayed that the order of the learned CIT(A) may be set aside and that of the A.O restored."*

3. The brief facts of the case are that the assessee company is a digital mobile advertising company based in Chennai with offices in USA. The assessee owned two intellectual property rights in the name of Los Angeles & Dex Monics, Zest ADZ which essentially helps advertisers and agencies deliver targeted mobile advertising campaign to drive brand awareness, marketing in smart phone and feature phone platforms. During the financial year relevant to assessment

year 2012-13, the assessee company has entered into an asset purchase agreement with M/s. Komli Media India (P) Ltd., to sell the above mentioned business of the assessee company. The assessee company has declared long term capital gains from sale of business at Rs. 18,55,846/-, by considering sale consideration of Rs. 2,44,14,250/-. The AO on the basis of agreement between the parties for sale of asset and also confirmation received from the purchaser observed that the assessee has received a sum of Rs. 5.76 crores as consideration for transfer of business. Thus, opined that said consideration is in the nature of business income which is assessable under the head 'business' and thus, rejected arguments of the assessee and made additions of Rs. 5,34,87,923/- under the head income from business and profession. The assessee carried the matter in appeal before the Id. CIT(A) and argued that the consideration received for sale of asset under APA is capital receipts which is assessable under the head capital gains. The assessee had also argued before the Ld. CIT(A) that, although agreed consideration for sale of asset is Rs. 5.76 crores, but the appellant had received only a sum of Rs. 2.64 crores and thus, the AO is erred in considering total agreed amount for the purpose of computing

income from sale of asset, even though there is a dispute between the parties on the issue of non-competition, as agreed in the agreement and said dispute is not settled during the impugned assessment year. After considering the facts and also by following certain judicial precedence, the Id. CIT(A) held that consideration received for transfer of business is assessable under the head income from business as per section 28(va) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), and thus upheld the findings of the AO in assessing income under the head income from business and profession. As regards consideration received for transfer of business, the Id. CIT(A) after considering relevant facts held that amount accrued and received during the assessment year 2012-13 only needs to be considered for the purpose of computation of income and thus, directed the AO to re-compute income by considering actual amount of consideration received during the financial year relevant to assessment year 2012-13. Aggrieved by the CIT(A), the Revenue is in appeal before us.

4. The Ld. DR, submitted that the Ld. CIT(A) has erred in directing the Assessing Officer to consider Rs. 2.64 crores for

taxation, even though the agreement between the parties clearly says consideration for transfer of business is Rs. 5.76 crores.

5. The Ld. Counsel for the assessee on the other hand submitted that, there is no dispute with regard to the fact that the agreed consideration for transfer of business/asset is Rs. 5.76 crores, but fact remains that during the financial year relevant to assessment year 2012-13, the appellant had received a sum of Rs. 2.64 crores only. The balance consideration for transfer of asset was not paid by the purchaser because of dispute between non-competition clauses in the agreement. The Ld. Counsel for the assessee further submitted that, he is not aware whether said dispute is settled or not. Therefore, the issue may be set aside to the file of the AO to re-consider the issue of computation of income from sale of asset under APA, after considering dispute between the parties and also year in which said dispute is settled. He, also further submitted that, as regards assessee's appeal on the very same issue, has been settled under Direct Taxes Vivad se Vishwas, 2020 scheme and said fact needs to

be considered while computing the income in terms of APA between the assessee and the purchaser.

6. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. As per asset purchase agreement between the assessee and the purchaser, agreed consideration for transfer of business/asset is Rs 5.76 crores. In fact, the buyer has confirmed having paid entire agreed consideration for transfer of business. The assessee claims that it has received a sum of Rs. 2.64 crores for the impugned assessment year and balance amount was withheld by the purchaser for dispute on certain issues including non-compete agreement clauses in agreement. Although, the assessee claims that it has received only part consideration in terms of APA agreement, but facts are not clear. The AO claims that the assessee has received full amount whereas, the assessee claims that it has received only part amount. The assessee also claims that there is dispute between the assessee and the purchaser on the issue of non-compete agreement. Although, the assessee claims that there is dispute between the assessee and the purchaser, but no evidence has been brought on record to substantiate

the claim. Therefore, we are of the considered view that the issue needs to go back to the file of the Assessing Officer for re-examination of various averments made by the assessee and also to re-compute the income in terms of APA between the assessee and the purchaser of the business. Hence, we set aside the issue to the file of the AO and direct the Assessing Officer to re-consider the issue in light of agreement between the parties and also the claim that there is dispute between the parties on certain issues. The AO is also directed to consider the issue of settlement of dispute on the very same issue by the assessee in their appeal under VSVS Scheme, 2020 while computing the income in terms of APA between the parties.

7. In the result, appeal filed by the Revenue is treated as allowed for statistical purposes.

Order pronounced in the court on 23<sup>rd</sup> November, 2022 at Chennai.

**Sd/-**  
**(महावीर सिंह )**  
**(MAHAVIR SINGH)**  
उपाध्यक्ष /**Vice President**

**Sd/-**  
**(जी. मंजुनाथ)**  
**(G. MANJUNATHA)**  
लेखासदस्य/**Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated, the 23<sup>rd</sup> November, 2022

**JPV**

आदेश की प्रतिलिपि □ ग्रेषित/Copy to:

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|------------------------|--------------------------|-------------------------------|
| 1. □ पीलर्षी/Appellant | 2. प्रत्यर्षी/Respondent | 3. आयकर आयुक्त (□ पील)/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF              |