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

\+ ITA 551/2026

SAHARA INDIA COMMERCIAL CORPORATION LTD .....Appellant

Through: Mr. Ajay Vohra, Sr. Advocate with Mr. Saksham Singhal and Mr. Ramkrishna Rao, Advocates.

versus

ASSISTANT COMMISSIONER OF INCOME TAX .....Respondent

Through: Mr. Ruchir Bhatia, SSC with Mr. Anant Mann, JSC and Mr. P. Gupta, JSC.

CORAM:
HON'BLE MR. JUSTICE DINESH MEHTA
HON'BLE MR. JUSTICE RAJNEESH KUMAR GUPTA

O R D E R

% 23.07.2026

1. The following substantial questions of law arise for consideration:

(i) Whether in the facts and circumstances of the case, the Tribunal was legally justified in confining the allowance of advertisement expenses incurred by the appellant proportionate to the appellant's revenue to the total revenue of the Sahara Group on the reasoning that some indirect benefit may have accrued to other group entities of the appellant?

2. Mr. Ajay Vohra, learned Senior Counsel for the appellant submitted that apart from the above question, one more question arises for consideration before this Court in this regard, learned Senior Counsel for the appellant, invited the Court's attention towards paragraph 64 of the Tribunal's order and

submitted that the Tribunal has affirmed the addition made by the Commissioner of Income Tax (Appeals) [*'hereinafter referred to as CIT(A)'*] to the tune of Rs. 16,74,78,648/- in relation to advances given at Mumbai Branch and Lucknow Branch, which was disallowed by the CIT(A) in the appeal filed by the appellant/assessee.

3. Learned Senior Counsel for the appellant, highlighted that, in spite of the fact that arguments were advanced and written submissions were made that such disallowance had been made by the CIT(A) without issuing any notice, which is a statutory requirement under Section 251 of the Income Tax Act, 1961, (*'hereinafter referred to as the Act'*), the Tribunal has neither recorded such submissions nor dilated upon the same and has affirmed such addition in cursory manner. He further read the order of the CIT(A) and pointed out that no notice had been issued by the appellate authority showing any intention to enhance the disallowance.

4. Mr. Anant Mann, learned Standing Counsel for the respondent, is not in a position to satisfy the Court that any notice, before enhancing the disallowance, was issued to the assessee. He, however, submitted that the appellate authority had thoroughly examined the ledger accounts and record and, therefore, the requirement of providing an opportunity of hearing had been duly observed. He argued that since the appellant's representative had appeared before the CIT(A), the requirement of issuance of notice had, in substance, been complied with and simply because evidence of service of notice is not available on record, no interference can be made.

5. Having heard learned Counsel for the parties, we are of the view that the following substantial question of law arises for our consideration:

(i) Whether in absence of a notice being issued to the assessee before enhancing the disallowance from Rs.11,05,12,445/- to Rs.16,74,78,649/-, can CIT(A) enhance the disallowance made?

6. Before proceeding with the matter, it will not be out of place to reproduce sub-Section 2 of Section 251 of the Act.

> *"(2) The 1 [*** Commissioner (Appeals)] shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction. Explanation.—In disposing of an appeal, the 1 [*** Commissioner (Appeals)] may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the 1 [*** Commissioner (Appeals)] by the appellant."*

7. A simple look at the above-quoted provision leaves no manner of doubt that it is obligatory on the part of the appellate authority to issue a notice and provide an opportunity of hearing to show cause against proposed enhancement or addition to the assessee. Indisputably, the disallowances have been made/enhanced by more than a sum of Rs. 5,00,00,000/- and no notice in this regard appears to have been issued to the assessee.

8. Mere discussion on the merit of the disallowance or detailed directions in this regard for scrutiny of the ledger of the assessee does not conform to the requirement of issuance of notice and providing an opportunity. Issuance of notice means the intention to take an action in explicit terms. Unless an assessee is put to notice about the proposed action, he cannot be expected to defend his cause. In the absence of such a notice having been served upon the assessee, not only his statutory rights but also fundamental rights guaranteed under Article 14 of the Constitution have been violated.

9. The question referred above is thus answered in favour of the assessee.

We have proceeded to answer this question at this stage because the decision of the question we have already framed may take substantial time. That apart, the above question which we have framed is involved in other appeals of the assessee which we have admitted and are pending consideration, and if we allow this question, the matter has to be remanded to the CIT(A), which itself may take time and the assessee or the Department may like to prefer an appeal thereagainst which would lie before the Tribunal. Such being a position, we are persuaded to decide the appeal in piecemeal.

10. The appeal is, therefore, partly allowed *qua* the aforesaid question. The order passed by the CIT(A) dated 31.01.2018 so also the order of the Tribunal dated 23.12.2025 to this extent are set aside. The matter is restored back to the CIT(A) to decide the above issue afresh in accordance with law, after issuing notice to the appellant/assessee.

DINESH MEHTA, J

RAJNEESH KUMAR GUPTA, J

JULY 23, 2026/*MR*