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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ITA 590/2016 & C.M.No.29868/2016
+ ITA 591/2016 & C.M.No.29869/2016
+ ITA 592/2016 & C.M.No.29870/2016
+ ITA 593/2016 & C.M.No.29871/2016
+ ITA 594/2016 & C.M.No.29872/2016
+ ITA 595/2016

THE PR. COMMISSIONER OF INCOME TAX -6 Appellant

Through: Mr.Ruchir Bhatia, Sr. Standing
counsel and Mr. Puneet Rai, Jr.
Standing counsel.

versus

HOUSING & URBAN DEVELOPMENT CORPORATION LTD.
..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER
% **04.10.2016**

Admit.

Issue notice to the respondent in ITA No. 595/2016, returnable on
03.01.2017.

The following question of law arises in ITA No. 595/2016.

“Did the Income Tax Appellate Tribunal (ITAT) fall into error in directing the inclusion of ₹1,78,16,739/- by the Assessing Officer (AO) on account of the provision of interest for Andrews Ganj

Project, and that it required deletion.”

In all other appeals the common question of law urged by the Revenue is :

“Whether the respondent/assessee’s method of accounting, i.e. to appropriate the receipts towards principal pay, in case of loss making transactions towards interest was appropriate?”

The AO observed that in some cases recovery of loans appropriated was based on the details provided by other agencies. In reassessment it was held that the assessee had first appropriated the principal in these defaulting accounts rather than the interest as against the normal accounting policy followed by the assessee to appropriate recoveries ordinarily towards interest liability.

The assessee contended that appropriation against normal policy would not evade on the income as ultimately the accounts were settled and waiver had taken place in the books of accounts.

The AO was of the opinion that treatment of capital loss, i.e. loss of principal and loss of interest had different ramification and that assessee had not shown any loss on capital but loss adjusted against the interest amount. On these basis, the AO brought to tax the deferring amounts for Assessment Years (AY) 2005-06, 2006-07, 2007-08, 2008-09 and 2009-10. The CIT(A) rejected the assessee’s contention. Before the ITAT, the assessee relied upon the decisions in *S.A. Jindal v. CIT* AIR 2000 SC 482; *Commissioner of Income Tax vs. EKL Appliances Ltd.* 345 ITR 241 and *Commissioner of Income Tax vs. B. Dalmia Cement Ltd.*, 254 ITR 377. The ITAT held as follows:

“11.3 We have heard the rival submissions and perused the material on record. In the case of B. Dalmia Cements Ltd. (supra) the Hon'ble Court has held that reasonableness of expenditure has to be judged from the point of view of the businessman and not the Revenue. Further, in the case of EKL Appliances (supra), the Hon'ble Court has held that the Tax department cannot dictate to the taxpayer whether or not to incur expenditure. In the case of SA Builders Ltd (supra) also the Hon'ble Supreme Court affirming the view in the case of B Dalmia Cements Ltd (supra) held that the IT authorities must put themselves in the shoes of the assessee and see how a prudent businessman would act and they must not look at the matter from their own viewpoint but that of a prudent businessman. We fully endorse the above view of the Hon'ble Courts. The appropriation of recovery against interest or principal will depend upon the agreement between the party either at the time of disbursement of loan or at the time of one time settlement of dues. If the parties agreed to appropriate the recovery first towards principal, then it has to be adjusted accordingly and Revenue can't direct to adjust such recovery otherwise. Further, as submitted by the ld AR without prejudice that in the case of the assessee, if accepting Revenue's argument recovery is adjusted first towards interest and then whatever remaining principal debt will qualify for bad debt as 'provisions of section 36(1)(vii) of the Act and entire exercise will be revenue neutral. In any case there is no bar on appellate authorities to entertain the claim of the assessee on the merit even in absence of revised return of income as held by the Hon'ble Supreme Court in the case of Goetze (India) Ltd. Vs. CIT, 284 ITR 323 (SC). Thus, we find force in the contention of the ld AR that entire exercise of adjustment of recovery against the interest income or principal debt is a revenue neutral exercise. In view of above discussion, we uphold that in the case of the assessee no addition can be sustained towards appropriation of recovery from defaulting accounts. Accordingly, the ground of the assessee is allowed.”

It was contended by the Revenue that the inconsistency shown by the assessee in cases where it sought to write-off principal amount was a salient aspect that was correctly taken into consideration by the AO, who noticed that in respect of normal transactions, amounts received were first appropriated towards principal liability and thereafter interest.

The AO was of the opinion that in the case of write-offs, the inconsistency led to loss of revenue and consequently, disallowed various amounts. As is evident from the ITAT's discussion, as against the facts of this case, there is no dispute that both interest and principal amounts were not repaid which led to the write off. Consequently, in the absence of a prohibition as to the manner of treating such loss or contingency in the books, the autonomy of the enterprise for the purpose of which *S.A. Jindal (supra)* was relied upon was an apt analogy. In other words, the effort of the assessee to reduce its exposure in the commercial sense, could not have been faulted given that in fact no income was received. Consequently, no substantial question of law arises on this aspect.

As far as the other question of law urged in ITA 592/2016, i.e. whether the revised return could have been taken into account, we are of the opinion that the findings here pertain to question of fact and do not call for interference. In any event, the matter stands remitted for consideration by the AO.

The surviving question in ITA No. 590/2016 and 591/2016 pertains to disallowance under Section 14A. We notice that ITAT has disallowed the entire amount received as exempt income, i.e. ₹1.72 lakhs and ₹1.22 lakhs for the respective years. Moreover, the AO appears to have proceeded straightway to apply Rule 8D which is contrary to the law laid down by this

court in *Joint Investment Pvt. Ltd. v. CIT* 372 ITR 694. As a result, no question of law arises.

In view of the above discussions ITA Nos. 590/2016, 591/2016, 592/2016, 593/2016 and 594/2016 are dismissed.

The question of law as framed in ITA No. 595/2016 shall be considered in that appeal.

List ITA No. 595/2016 on 03.01.2017.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

OCTOBER 04, 2016/*mr*