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IN THE HIGH COURT OF DELHI AT NEWDELHI

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ITA 171/2017

THE PR. COMMISSIONER OF INCOME TAX – 4 Appellant

Through: Mr. Ruchir Bhatia, Senior Standing
Counsel.

versus

HI-TECH ELECTROTHERMIC &
HYDROPOWER LTD.

... Respondent

Through: Mr. Ajay Vohra, Senior Advocate with
Ms. Kavita Jha & Ms. Roopali Gupta,
Advocates.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE PRATHIBA M. SINGH

ORDER

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25.07.2017

1. This is an appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') against an order of the Income Tax Appellate Tribunal ('ITAT') dated 4th August, 2016 in ITA No. 6080/Del/2013 for the Assessment Year ('AY') 2007-08.

2. On 15th March, 2017 while admitting the appeal and framing one question of law, the Court passed the following order:

“The Revenue urges three questions of law: -

(i) Whether the ITAT erred in deleting the addition of Rs.5,25,685 made by the Assessing Officer on account of 'interest paid to M/s IFCI Ltd.' ignoring the fact that the said expenditure is not allowable as deduction as per the

explanation to section 37 (1) of the Income Tax Act, 1961?

(ii) Whether the ITAT erred in deleting the addition of Rs.70,44,023 made by the Assessing Officer on account of 'amounts written off ignoring the fact that there was no business during the year under consideration and these amounts cannot be allowed as business expenditure?

The Court is of the opinion that no substantial question of law arises on these two issues. The amount of Rs.5,25,685 could not in the circumstances have attracted the mischief under the explanation to Section 37 (1) as it was the interest paid for late repayment of advance to M/s IFCI Ltd, even as far as the amount written off, i.e., Rs.70,44,023 is concerned. The Court notes that the sole rationale for disallowance by the AO was that the assessee had stopped its business. The assessee had claimed the said amount as the value of old stock written off. The question of whether the assessee's business continued or not, did not in such circumstances, arise for consideration.

Admit the appeal so far as the following question of law is concerned: -

"Whether the ITAT erred in deleting the addition of Rs.22,90,00,000 made by the Assessing Officer on account of 'amount transferred to: capital reserve' ignoring the fact that the said amount was a revenue receipt in the hands of the assessee and therefore the provision of Section 41 (1) of the Act was applicable?"

Issue notice of appeal to the respondent/assessee, returnable on 17th July, 2017. Notice be issued dasti in addition."

3. Thereafter, when the matter was heard on 17th July, 2017, Mr. Ajay Vohra, learned Senior Counsel appearing for the Assessee, submitted that the only question framed in the appeal stood answered in favour of the Assessee by the decision of this Court in ***CIT v. Pasupati Spinning***

Weaving Mills Ltd. [2015] 378 ITR 80 (Del).

4. Mr. Ruchir Bhatia, learned Senior Standing Counsel appearing for the Revenue submitted that notwithstanding the aforementioned decision, it is the decision of this Court in ***Logitronics P. Ltd. v. CIT (2011) 333 ITR 386 (Del)***, which would cover the case at hand.

5. The Court has perused the decision in ***Logitronics P. Ltd. v. CIT (supra)*** which holds that if a loan was taken for acquiring a capital asset, waiver thereof would not amount to income exigible to tax. On the other hand, if the loan was for trading purpose and was treated as such from the very beginning in the books of account, the waiver thereof may result in income, more so when it was transferred to the profit and loss account.

6. On the facts of the present case, it appears that the above decision is not helpful to the Revenue because of the categorical finding of the ITAT is that the loan availed by the Assessee from IFCI was for carrying out the manufacturing activities by the unit set up by Assessee in Palakad, Kerala. The ITAT has returned a finding that “the loan was for the purchase of capital asset.”

7. Mr. Vohra has also placed before the Court a copy of the sanction letter from IFCI, evidencing the fact that the term loan was utilised for purchasing fixed assets. This was further supported by copies of the audited balance sheet as at 31st March 2000 and 31st March 2001. He has also placed before the Court a copy of the audited balance sheet and

Profit & Loss account (P&L Account) for the financial year 2006-07 evidencing that the waived off amount has been credited to capital reserve and the interest amount has been written off in the P&L Account.

8. Consequently, the ratio of the decision of this Court in ***CIT v. Pasupati Spinning Weaving Mills Ltd.*** (*supra*) squarely covers to this appeal and the only question framed in this appeal is accordingly answered in the negative i.e. against the Revenue and in favour of the Assessee. It is held that the ITAT did not err in deleting the addition of Rs.22.90 crores made by the AO on account of “amount transferred to capital reserve.”

9. The appeal is accordingly dismissed.

S.MURALIDHAR, J.

PRATHIBA M. SINGH, J.

JULY 25, 2017

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