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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 170/2017 & CM No.7386/2017

THE PR. COMMISSIONER OF INCOME TAX-4 Appellant
Through: Mr. Puneet Rai for Mr. Ruchir Bhatia,
Advocate.

Versus

INDUSTRIAL FINANCE CORPORATION OF INDIA LTD.
..... Respondent
Through: Ms. Kavita Jha and Ms. Shivani
Khandekar, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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15.03.2017

1. The question of law urged in this appeal against the order of the Income Tax Appellate Tribunal (ITAT) is:-

“Whether the investment write off to the tune of ₹2,56,35,395/-, could be characterised on the Revenue side or did it fall in the Capital side as loss?”

2. The assessee, a statutory Corporation created in 1948 and restructured in 1993, is engaged in financing companies and ventures. It lent finances through rupee loans, foreign currency loans, under writin, direct subscription (of equity), issuing guarantees and equipment leasing services to various borrowers. These fall under the outgoings given to its clients/borrowers and are broadly shown as “investments as assistance” to industrial concerns in the form of equity shares, preference shares, convertible debentures and

non-convertible debentures. This is in accordance with the provisions of the Companies Act. The assessee also separately maintains an investment portfolio in respect of 17 of its financial assistance transactions; the assessee reported losses which it sought to write off as bad debts. The Assessing Officer (AO) and the Commissioner of Income Tax (Appeals) [CIT(A)], rejected the assessee's contentions.

3. The ITAT upon appeal accepted the assessee's plea, *inter alia* finding as follows:-

“9. The statutory provision in relation to allowance of bad debt are not exhausted there is a very thin line between allowance of bad debt as well as allowance of business loss arising during the course of carrying on of the business. In certain circumstances, it may happen that debt gets bad it can also be successfully claim as a trading loss. There cannot be a presumption in the matter and it is for the assessee to establish its claim. Naturally, the claim of trading loss and claim of bad debts are saddled with different conditions. The claim of the assessee is also tested for its allowance as trading loss. According to the provision of Section 28 of the Income Tax Act profits and gains of the business or profession, which was carried on by the assessee at any time during the previous year, is chargeable to tax under the head "Profit and Gains of the Business or Profession. Such profit and gains can only be arrived after accounting for the loss coo. The loss of the equity shares which is in the form of financial assistance given to the different borrowers in the form of financial assistance, as equity participation is loss arising from the business of the assessee. Therefore, if such loss is suffered during the year than same is allowable as deduction to the appellant while computing its business income. All these losses have been demonstrated by the appellant by showing various notes and

committee meetings that such losses have been determined and accepted in the current year. The reliance placed by the appellant on circular dated 24.11.1965 issued by CBDT on the basis of law laid by Hon'ble Supreme Court in case of Badridas Daga Vs. CIT 34 ITR 10 and associated Banking Corporation of India Ltd. Vs. CIT 56 ITR 1 wherein case of embezzlement it is stated that the loss should be allowed as deduction in the year in which it is discovered. Therefore, in the year in which the loss is discovered and determined by the assessee same should be allowable in that year. According to the various notes, the losses have been discovered and determined during the year and therefore, same is allowable to the assessee during this year. The retention of accounts @ Rs. 1 is only for the purposes of control over such investments for management decision and it do not serve any other purposes. Therefore, such accounting treatment does not go against the claim of the assessee. In view of this, alternatively also we are of the view that write off investment is also business loss suffered by the assessee during the course of its business and as it discovered and determined during the year same is allowable to the assessee during the year. In the result, we reverse the finding of Id CIT (A) in confirming the disallowance of Rs. 256353951- on account of investment written off.”

4. As is evident, the ITAT relied upon the judgment of ***Badridas Daga Vs. Commissioner of Income Tax [1958] 34 ITR 10***, where the Supreme Court stressed that:

“.....when a claim is made for a deduction for which there is no specific provision in Section 10(2), whether it is admissible or not, will depend on whether, having regard to accepted practice and trading principles, it can be said to

arise out of the carrying on of the business and to be incidental to it. If that is established, then the deduction must be allowed, provided of course there is no prohibition against it, express or implied, in the Act.....

.....At the same time, it should be emphasised that the loss for which a deduction could be made under Section 10(1) must be one that springs directly from the carrying on of the business and is incidental to it and not any loss sustained by the assessee, even if it has some connection with his business.....”

5. Applying to the facts of the present case, the above decision instructs that where monies were advanced through the mechanism of equity participation, the intention of the lender – in the present case, the assessee, was to derive income rather than to increase its investment on the capital side. Such being the case, if there were profits, with the assessee/lender from the investment, it would properly lie in the Revenue side of income and conversely, if there were losses – as in the present case – it properly would have fallen, as was correctly claimed, as bad debts in the present instance.

6. For the above reasons, this Court is of the opinion that no substantial question of law arises. The application alongwith pending application is consequently dismissed.

S. RAVINDRA BHAT, J.

NAJMI WAZIRI, J.

MARCH 15, 2017

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