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

\+ **<u>ITA 92/2018</u>**

PR. COMMISSIONER OF INCOME TAX-8 ..... Appellant

Through: Ms. Vibhooti Malhotra, Jr. Standing Counsel and Mr. Rahul Chaudhary, Sr. Standing Counsel for CIT.

versus

SPECTRA NET LIMITED ..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

<u>O R D E R</u>

% **09.04.2018**

The Revenue appeals against an order of the Income Tax Appellate Tribunal ('ITAT') under Section 260-A of the Income Tax Act, 1961 ('the Act') contending that the rejection of its arguments on the tenability of re-assessment and the justification given for the disallowance of loan restructuring fee and alike charges paid by the assessee, was erroneous.

Originally, the assessment was completed under Section 143(1) of the Act. Subsequently, the re-assesssment notice was issued by the Revenue under proviso to Section 148 of the Act which stated that the assessee had wrongly claimed a sum of Rs.5,40,00,000/- under Section 2(28A) of the Act.

The Revenue Authorities initially upheld the assessment proceedings and also the additions made. The assessee's appeal succeeded before the Income Tax Appellate Tribunal ('ITAT'), which, on the issue of subsequent assessment proceedings for the Assessment Year 2003-04, accepted the assessee's contentions with respect to the correct interpretation under Section 2(28A) of the Act. It was held on the merits that the broad nature of the definition of "interest" under Section 2(28A) of the Act includes not only interest but also the other amounts.

This Court notices that the ITAT relied upon the judgment in the case of *'Commissioner of Income Tax vs. Gujarat Guardian Limited*', 220 CTR 526 and reasoned as follows:-

> *"7.2. The case of the assessee on merit is also governed by section 2(28A) of the I.T. Act which provides the definition of "interest" as under:*
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> *"Interest", means interest payable in any manner in respect of any moneys borrowed or debt incurred (including a deposit, claim or other similar right or obligation) and includes any service fee or other charge in respect of the moneys borrowed or debt incurred or In respect of any credit facility which has not been utilized;"*
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> *7.3. The Learned Counsel for the Assessee relied upon the decision of Hon'ble Delhi High Court in the case of CIT vs. Gujrat Garden Ltd., (supra) which supports the explanation of the assessee that restructuring process fees being in nature of interest under section 2(28A) was*

revenue expenditure. Learned Counsel for assessee also filed details of the restructuring process fees paid in assessment year under appeal as per law at page 41 of the paper book which also support the contention of assessee that when payment of interest is made in assessment year under appeal, it is an allowable deduction under section 43B(d) of the I.T. Act. It may be noted here that loan restructuring process fees as has been paid by the assessee to ICICI Bank, which represented the interest that would have been payable by the assessee if no restructuring of loan have taken place. Since we have already quashed the reopening of the assessment, therefore, there is no need to discuss the merit of the case further. In view of the above findings, we set aside and quash the reopening of the assessment and delete the entire addition."

The Revenue's contention that the restructuring fee paid by the assessee under these circumstances, in the opinion of this Court, is not interest, is unpersuasive. Firstly, Section 2(28A) of the Act is using wide terms and comprehensively not only 'interest' *per se* and also the other amounts, such as deposits, service fee or "other charge in respect of the moneys borrowed or debt incurred or in respect of any credit facility which has not been utilised". This broad definition led the Court to the interpretation in the case of *Gujarat Guardian Ltd.* (supra) that the pre-payment premium or charges were "interest" within the meaning of the Act. A restructuring fee or processing fee or a payment of any description would likewise answer the description of "other charge in respect of the moneys borrowed....." or "in respect of any credit facility which has not been utilised".

For these reasons, the Court is of the opinion that no substantial question of law arises.

The appeal is therefore dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

APRIL 09, 2018
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