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

\+ **ITA 1425/2018 & CM APPL. 52025/2018**

THE PR. COMMISSIONER OF INCOME TAX -3 ..... Appellant
Through: Mr. Ruchir Bhatia, Advocate

versus

FEDERAL MOGUL GOETZE INDIA LTD. ..... Respondent
Through: Mr. Satyen Sethi, Mr. Arta Trana Panda and Ms. Gargi Sethee, Advocates

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% 20.08.2019

1. The Revenue is in appeal against the order dated 16th October 2017 passed by the ITAT in ITA Nos.1521 & 1895/Del/2013 for the Assessment Year (AY) 2008-09.

2. Appearing on advance notice, Mr. Satyen Sethi, learned counsel appearing for the Respondent, points out that the present appeal has been filed against the common order of the ITAT in two appeals i.e. ITA Nos.1521/2013 and 1895/2013., one being an appeal by the Assessee (ITA No.1521/2013) and the other an appeal by the Revenue (ITA No.1895/2013) and therefore, there should have been two appeals in this Court.

3. Be that as it may, for the reasons hereafter mentioned since the Court is not inclined to frame any question of law, the above objection is left open

for decision in an appropriate case.

4. The following two issues are raised in the present appeal by the Revenue:

> "2.1 Whether on the facts and circumstances of the case and in law ld. ITAT erred in deleting the addition of Rs.2,13,84,000/- made by the Assessing officer under section 36(1)(iii) of the Income Tax Act,1961 on account of notional interest on alleged loan given to its subsidiary?
>
> 2.2 Whether on the facts and circumstances of the case and in law ld. ITAT /CIT(A) erred in deleting the addition of Rs.2,48,95,404/- made by the Assessing officer on account of prior period expenses?"

5. As far as the issue at 2.2 is concerned, the Court finds that there is a concurrent factual determination both by the CIT (A) and ITAT on the justification for the prior period expenses incurred by the **A**ssessee. In that view of the matter, the Court is not inclined to frame any question on this issue.

6. As far as the issue at 2.1 is concerned, it is argued by learned counsel for the Revenue that the ITAT has merely followed its earlier order in the Assessee's own case for AY 2007-08 and has not really discussed the facts pertinent to the AY in question. It is further pointed out that the Assessee failed to point out what was the commercial expediency in advancing loans to its subsidiary while at the same time paying interest on the loans borrowed by it from Banks.

7. Learned counsel for the Assessee has drawn the attention of this Court to the decision of the Supreme Court in ***Hero Cycles Pvt. Ltd. v. Commissioner of Income Tax, 2015 379 ITR 347 (SC)***, where relying on the earlier decision in ***S.A. Builders Ltd. v. Commissioner of Income Tax (Appeals)***

2007 (288) ITR 1 (SC), the Supreme Court upheld the advancing of loans by the Assessee to its subsidiary as being for 'commercial expediency'. There was a further issue in the above case concerning advances given by the Assessee to its own Directors at a subsidized interest rate of 10% whereas the Assessee itself was borrowing from its banks at the rate of 18%. This too the Supreme Court was not inclined to interfere with.

8. Turning to the case on hand, this Court finds that in the impugned order, the ITAT, while adverting to this issue, has observed as under:

> "…we find that the assessee has huge interest free funds in the form of share capital& reserve surplus which stood at more than Rs. 2,000 crores and surplus cash flow from operating activities at Rs. 149 crores and fresh capital received during the year amounted to Rs. 100 crores. In wake of such huge surplus fund, advances of Rs. 9.71 crore during the year, cannot be presumed to be out of interest bearing loans. Thus, in light of the principle held by the Tribunal in the earlier year, we direct the deletion the said disallowance and accordingly, grounds raised by the Assessee are allowed."

9. On the facts of the present case, when factually the ITAT has found that the Assessee had surplus funds which it could part with for the business interests of its subsidiary, the view taken by the ITAT is a plausible one and does not call for interference.

10. No substantial question arises. The appeal and pending application are dismissed.

11. 1. The tax effect being below the stipulated monetary limit, the appeal is treated as not pressed in terms of the CBDT Circular No. 17 of 2019 dated 8th August, 2019 and is disposed of as such.

S. MURALIDHAR, J.

TALWANT SINGH, J.

AUGUST 20, 2019/rhc