

\$~3

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

+ ITA 1159/2018

PRINCIPAL COMMISSIONER OF INCOME TAX-4 Appellant

Through: Mr. Raghvendra Singh and Ms. Easha
Kadian, Advocates.

versus

GAURSONS REALTY PVT. LTD. Respondents

Through: Mr. S. Krishnan, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **13.02.2020**

1. The present appeal is directed against the order dated 07.05.2018 passed by the Income Tax Appellate Tribunal, Delhi Bench 'C' New Delhi in ITA No. 753/De1/2018 and SA No. 107/De1/2018. The aforesaid appeal relates to the assessment year 2014-15. The Tribunal by the impugned order has allowed the said appeal preferred by the Respondent- assessee and deleted the disallowance of interest made by the Assessing Officer of the amount of Rs. 5.68 crores. The disallowance was made by the Assessing Officer by holding that the assessee had obtained interest bearing loans which had in turn been advanced to sister concerns and other associates without charging interest and that such interest-free advances were not made for business purposes. Consequently, the Assessing Officer has held that the assessee did not satisfy the condition laid down in Section 36 (1) (iii) of the Income Tax Act.

2. Briefly stated, the facts of the case are that the assessee is engaged in the business of real estate development. During the year under consideration, the assessee company was developing a residential project namely 'Gaur Saundaryam' at Greater Noida (West). The assessee had share holder fund of Rs. 16.70 Crore, share application money of Rs. 11.11 crore and 108.68 crore of advance received from customers. Since about 37% of the project was

completed, following percentage completion method, assessee claimed 37% of total interest as its expenses during the year under consideration. The assessee company filed return of income on 28.09.2014 declaring a total income of Rs.20,80,17,7801- for the A.Y. 2014-15. The return was selected for scrutiny and notice under section 143(2) was issued on 28.08.2015. The AO disallowed the interest expense of Rs. 5,68,97,378/- being diversion of interest bearing funds to its sister concern on the ground that these advances were made without any commercial expediency. The assessee preferred appeal before Ld. CIT(A). Ld. CIT(A) confirmed the addition made by the AO. Thereafter, appeal was filed before the ITAT. ITAT allowed the appeal of the assessee, rejecting the disallowance made by the AO. Aggrieved by the said order, revenue has filed the present appeal.

3. There are two different entities to which the amounts were either advanced as interest free loans, or wherein investment was made as share application money by the assessee. The first transaction relates to Gaursons Realtech Pvt. Ltd.. The assessee had invested Rs. 53.22 crores towards share application money and had also advanced a loan of Rs. 79.65 crores in Gaursons Realtech Pvt. Ltd. The submission of learned counsel for the Appellant is that the Assessing Officer had undertaken a forensic examination of the money trail and found that the loans received from the two Banks namely, Bank of Baroda and Andhra Bank aggregating to Rs. 158.50 crores, had been channeled by the assessee *inter alia* to Gaursons Realtech Pvt. Ltd. The Tribunal has found that, as a matter of fact, the assessee had paid the amount of Rs. 79.85 crores on behalf of Gaursons Realtech Pvt. Ltd. to JP Infrastructure Ltd in respect of an agreement whereunder Gaursons Realtech Pvt. Ltd. had agreed to purchase land ad measuring 300 acres from JP Infrastructure Ltd. At the same time, there was an underlying transaction between the assessee and Gaursons Realtech Pvt. Ltd. by way of a Memorandum of Understanding dated 30.03.2013, whereunder the assessee was to get land ad measuring 88,500 sq. mtrs. (which translates to about 22 acres). That apart, by investing in the share capital of Gaursons Realtech Pvt. Ltd. with the deposit of share application money of Rs. 53.22 crores, the assessee was to acquire a controlling stake in

Gaursons Realtech Pvt. Ltd. which was also engaged in the business of real estate development. Therefore, there is a direct nexus between the expenditure incurred and the purpose of business. It has been held in ***Hero Cycles (P) Ltd v Commissioner of Income Tax (Central) Ludhiana*** [2015] 63 taxmann.com 308 (SC), that once it is established that there is nexus between expenditure and purpose of business, revenue cannot justifiably claim to place itself in arm-chair of businessman, or in the position of the Board of Directors, and to decide how much is reasonable expenditure having regard to circumstances of case. In this regard, we may also note the ratio of the decision of the Supreme Court in ***S.A. Builders Ltd. vs. Commissioner of Income Tax (Appeals) and Anr.*** (2007) 288 ITR 1 (SC), wherein the Supreme Court held that the decisions relating to Section 37 of the Act will also be applicable to Section 36 (1) (iii) because in Section 37 also, the expression used is “*for the purpose of business*” and that while interpreting Section 37, “*for the purpose of business*” includes expenditure voluntarily incurred for commercial expediency, and it is immaterial if a third party also benefits thereby. In our view the Tribunal rightly allowed the appeal of the assessee and restored the deduction claimed by the assessee under Section 36 (1) (iii) of the Act.

4. The other transaction that the assessee undertook was in respect of the loan of Rs. 52.36 crores advanced to M/s Gaursons India Ltd. M/s Gaursons India Ltd. is the holding company of the assessee. The submission of learned counsel for the Appellant is that since M/s Gaursons India Ltd. is neither a subsidiary, nor an associate company, the advancement of loan by the assessee to Gaursons India, to the tune of Rs. 52.36 crores, did not make business sense and therefore, it cannot be considered to be made “*for the purpose of business*”. On this aspect, we find that the assessee had consistently contended that it had excess interest free fund available with it to make investments and therefore it could not be concluded that the assessee had invested the interest-bearing loans by advancing an interest free loan to M/s Gaursons India Ltd. without business expediency. The Tribunal has considered this aspect and found that as per the balance sheet of the assessee, it was having Rs. 16.7 crores in its shareholders fund, Rs. 11.11 crores as share application money and Rs. 108.68 crores as

advances received from the customers. Thus, the assessee had interest-free funds available with it to the tune of Rs. 136.49 crores. The interest-free loan granted by the assessee to M/s Gaursons India Ltd. was only Rs. 52.36 crores. In ***Commissioner of Income Tax (Large Taxpayer Unit) v Reliance Industries Ltd.*** [2019] 410 ITR 466 (SC), the Supreme Court upheld the view of the Tribunal that where the interest-free fund is available to the assessee which is sufficient to meet its investment, it can be presumed that investments were made from interest-free funds available with the assessee. Similarly, this Court in ***Commissioner of Income Tax v DD industries*** [2015] 57 taxmann.com 310 (Delhi) observed that where adequate funds were available during the assessment years and, since in the past the Revenue had accepted the assessee's plea in this regard and not brought the amounts to tax under Section 36 (1)(iii), the Revenue could not have taken a different view for three years in question, particularly, without any conclusion that, in fact, general reserves, surpluses and other funds were not available. Reference may also be made to the decision of this Court in ***Commissioner of Income Tax v Tin Box Co.*** (2003) 260 ITR 637, wherein it was held that the finding of the Tribunal that the Department had not been able to controvert or disprove the fact that the assessee had substantial capital and interest-free funds available with it, not only in the preceding years but also in the years under consideration, which far exceeded the interest-free advances to the sister concern, is not without any evidence or material and therefore, disallowance of interest was deleted. Therefore, as already noted, in the present case, it is clear that there were sufficient interest-free funds available with the assessee, allowing them to advance the loans in question. Thus, the Tribunal, in our view was correct in concluding that it could not be said that it was the interest-bearing loan obtained from Bank of Baroda and Andhra Bank which had been advanced as interest-free loan to M/s Gaursons India Ltd.

5. We therefore find no infirmity in the impugned order passed by the Tribunal. No substantial question of law arises for our consideration in view of the above factual findings returned by it.

6. In view of the above, the appeal is dismissed.

VIPIN SANGHI, J

SANJEEV NARULA, J

FEBRUARY 13, 2020

nk