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

\+ ITA 893/2019

THE PR. COMMISSIONER OF INCOME TAX -6 ..... Appellant

Through: Mr. Ruchir Bhatia, SSC with Ms. Deeksha Gupta & Mr. Pratyaksh Gupta, Advs.

versus

NATIONAL HOUSING BANK ..... Respondent

Through: Mr. Rohit Jain & Mr. Aniket D. Agrawal, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

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

% **19.02.2024**

1. On 05 February 2024 we had passed the following order:

> "1. Mr. Bhatia, learned counsel appearing for the appellant, fairly submits that insofar as proposed questions 2.1 & 2.2 are concerned they are concluded against the Revenue in light of the judgment rendered by the Court in **Commissioner of Income Tax v. Taikisha Engineering India Ltd.** [(2015) 370 IIR 338] and **H.T Media Ltd. v. Principal Commissioner of Income Tax-IV, New Delhi** [(2017) 399 ITR 576|.
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> 2. Insofar as question 2.3 is concerned, we note that the Commissioner of Income 'fax (Appeals) ["**CIT(A)**"] had answered the same against the appellant as would be evident from paragraph 4.3 of the order of the CIT(A), which is extracted hereinbelow:
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>> "4.3 I have carefully considered the facts of the case and perused material available on the record. <u>There is no factual change on the issue under consideration since 2000-01; therefore, I am unable to understand that why the interest income of Rs. 141.66 crores and provision</u>

of expenditure of Rs. 35.29 crores shown as liability were charged to tax in the relevant AY and not in any other year; the AY 2000-01 to 2009- 10. In case the Finding of the AO is accepted for the sake of discussion, then the question arises the year in which it can be taxed. According to me, since the income has not accrued and receipt in the relevant year, therefore, the same cannot be taxed in this year as it is also not a case of cessation of liability. Definitely, the interest income of Rs. 141.66 crores and provision of expenditure of Rs. 35.29 crores shown as liability can be charged to tax as per the law in the year of accrual/receipt. Undoubtedly, the income of preceding year cannot be charged to tax in subsequent year; therefore, 1 am of the considered view that the interest income of Rs. 141.66 crores and provision of expenditure of Rs. 35.29 crores shown as liability the liability cannot be taxed in the relevant AY unless taxable u/s 41. In respect of the cessation of liability u/s 41, reference is made to the decision of the Hon'ble Delhi High Court in the case of Shree Vardhman Overseas Ltd. (2012) 204 Taxman 524. Further, here the principle of consistency requires to be adhered to in view of the judgment of the Hon'ble Supreme Court in the ease of Excel Industries Ltd. (Date of order 09.10.2013). In view of the above submission, I hereby hold that the ease laws relied upon by the AC in taxing the interest income of Rs. 141.66 crores and provision of expenditure of Rs. 35.29 crores shown as liability is not relevant in the case of the appellant. Therefore, the additions of Rs. 141,66,00,000/-and Rs. 35,29,08,628/- are hereby deleted. The consequential relief shall be given by the AO.

3. The same has been upheld by Income Tax Appellate Tribunal ["**ITAT**"].

4. We thus call upon Mr. Bhatia, to take instructions and apprise us whether the interest income of Rs. 141.66 crores and expenditure of Rs.35.29 crores was offered for taxation in the subsequent Assessment Years.

5. Let the appeal be re-notified for 19.02.2024."

2. Mr. Bhatia, learned counsel, today draws our attention to an order passed by the Supreme Court in Civil Appeal No. 2155 of 1999 [State Bank of India Thr. General Manager vs. National Housing Bank & Ors.] and dated 31 July 2013 pursuant to which the interest income

which was spoken of, according to him, became refundable.

3. The aforesaid judgment in our considered opinion would have no bearing since we are informed that the interest income of INR 141.66 crores was received and had accrued in Assessment Year ["**AY**"] 2000-01. It is on the aforesaid basis that the Income Tax Appellate Tribunal ["**ITAT**"] had proceeded to record that it could have if at all been subjected to tax in that year and in any case its taxability would not be one which would arise in AYs 2000-01 to 2009-10. It is in the aforesaid context that it has proceeded to hold that the interest income could not have possibly been recognised as having accrued in AY 2010-11 which was the subject year of the appeal.

4. We thus find no substantial question of law which can be said to arise. The appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 19, 2024/kk