$~8

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

\+ ITA 912/2019

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

Through: Mr. Aseem Chawla, Sr.SC with Ms. Pratishtha Chaudhary, Mr. Aditya Gupta and Ms. Nivedita, Advs.

Versus

SH. AMIT KUMAR JAIN ..... Respondent

Through: Mr. Saubhagya Agarwal, Adv.

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

O R D E R

% **22.02.2024**

1. This appeal is directed against the order of Income Tax Appellate Tribunal ["**ITAT**"] dated 14 June 2019 and proposes the following questions of law for our consideration:

> A. Whether on the facts and in the circumstances of the case, ITAT has erred in upholding the decision of the Commissioner of Income Tax (Appeals) deleting the addition under Section 2(22)(e) of the Income Tax Act, 1961 ["**Act**"] of Rs. 3,68,33,114/- ignoring the fact that the sum received by the assessee from M/s Mahagun India (P) Ltd. ["**MIPL**"] is squarely covered under the purview of the provision "*deemed dividend*" under Section 2(22)(e) of the Act?

B. Whether on the facts and in the circumstances of the case, ITAT is justified in deleting the disallowance under Section 57 of the Act which was restricted to Rs. 38,05,852/- as against Rs. 96,63,773/- made by the Assessing Officer ignoring the fact that the assessee failed to discharge its onus that the loan was provided for the intention of earning income?"

2. We note that while dealing with the issue of the funding which was provided by the assessee to MIPL, the ITAT has on an analysis of the facts as obtaining held as under:

> "19. We have given a thoughtful consideration to the orders of the authorities below. <u>There is no dispute that the assessee has raised secured loans from HDFC Ltd, BHW Home Finance and Religare Finvest Ltd. It is also not in dispute that the assessee has transferred these borrowings as loan to MIPL. It is also not in dispute that the loans have been raised in F.Ys 2007-08, 2008-09 and 2009-10. The assessee has charged interest from MIPL @ 15% whereas the assessee is paying interest on borrowed funds ranging from 12.94% to 18.5%. We have also examined the bank statement of Canara bank exhibited at pages 28 to 31 of the paper. A perusal of the same shows that as soon as the assessee received the funds from HDFC Ltd, BHW Home Finance and Religare Finvest Ltd., the same were transferred to MIPL, thus clearly establishing the direct link/nexus between the borrowings lending.</u> On these facts, we do not find any reason for any disallowance on this count. We, accordingly, direct the Assessing Officer to delete the entire disallowance of Rs. 93,63,773/-. Accordingly, Ground Nos. 4 and 5 of the Revenue are dismissed and the solitary grievance raised by the assessee is allowed."

3. We note that on an ex facie reading of Section 2(22)(e) of the Act, the provisions would not be attracted since this was not a case where MIPL had accorded a loan or advance to the assessee. This would be evident from a reading of sub clause (e) of Section 2(22) of the Act which is reproduced below:-

> "**Section 2**
> **(22):** "dividend" includes-

(e)-<u>any payment by a company</u>, not being a company in which the public are substantially interested, of any sum (whether as representing a part of the assets of the company or otherwise) <u>made after the 31st day of May, 1987, by way of advance or loan to a shareholder, being a person who is the beneficial owner of shares</u> (not being shares entitled to a fixed rate of dividend whether with or without a right to participate in profits) holding not less than ten per cent of the voting power, or to any concern in which such shareholder is a member or a partner and in which he has a substantial interest (hereafter in this clause referred to as the said concern), or any payment by any such company on behalf, or for the individual benefit, of any such shareholder, to the extent to which the company in either case possesses accumulated profits;"

4. The appellant has also been unable to show how the provision of Section 57 of the Act could be said to be attracted if the amount paid otherwise did not fall within the ambit of dividend as defined.

5. In view of the aforesaid, we find no merit in the instant appeal and which shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 22, 2024/p