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

\+ ITA 136/2022

PR. COMMISSIONER OF INCOME TAX-1 ..... Appellant

Through: Mr. Sanjay Kumar, Ms. Easha and Ms. Hemlata Rawat, Advs. for Revenue.

versus

AZALEA INFRASTRUCTURE PVT. LTD. ..... Respondent

Through: Mr. Gautam Jain, Mr. Ajit Kumar Jha & Mr. Piyush Kumar Kamal, Advs.

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

ORDER

% **04.03.2024**

1. The Commissioner impugns the order dated 28 January 2021 passed by the Income Tax Appellate Tribunal [**"ITAT"**] and insofar as it has proceeded to reject the appeal of the Department which had raised the issue of Short Term Capital Loss originating from the forfeiture of share warrants of India Bulls Infrastructure Ltd.

2. We note that the ITAT has on a consideration of facts as they obtained observed as follows:-

> "8. We have carefully considered the rival contention and perused the orders of the lower authorities. We have also considered the various judicial precedents cited by the learned CIT - A and relied upon by the learned authorised representative as well as the judicial precedents relied upon by the 'learned assessing officer for making the above addition. The facts clearly shows that on October 20, 2010, India Bulls Power Ltd pursuant to the provisions of Section 192A of the Companies Act, 1956 made a preferential allotment of 42 crore as fully convertible warrants to 4 different companies which are the entities promoted by the promoters of India bulls real estate Ltd, which upon conversion would entitle them to acquire an equivalent number of equity shares of the company of the face value

of ₹10 each to conversion price of ₹29 per equity shares. Consequent to that 15 crore warrants of the India bulls Power Ltd convertible into 15 crore equity shares of the India Bulls Power Ltd of face value of ₹10 each at the option of the warrant holder, assessee company, was allotted. The warrants were issued and allotted to the assessee on payment of 25% of the warrant price that is Rs 108.75 crores. Thus, a balance amount of ₹ 326.25 crores was further payable by the assessee company for the full value of the warrant. Subsequently, as per the order of the Honourable High Court on 17/10/2011 u/s 391 - 394 of The Companies Act 1956 along with three other companies, one of them being the India bulls infrastructure and Power Ltd which invested in a company where from the money is rooted for investment in India bulls Power Ltd, sanction was granted by the Honourable High Court. The scheme was so framed by the companies that the warrant issued by India Bulls Power limited would be converted into partly paid shares of the company and the holder was liable to pay 1 % of the balance amount within two days from the effective date of scheme i.e. by 27/11/11. Naturally, the promoters of India Bulls group promote all the companies who applied for the warrant of the assessee. Therefore, at the time of framing of the scheme, it was within their knowledge that the companies who have applied for warrant, has initially for payment of 25% of the warrant price has borrowed money from its holding company which in turn borrowed from another company and that another company also borrowed fund from India bulls infrastructure and Power Ltd which is one of the company involved in the scheme. Therefore, it is apparent that the whole scheme was created for transferring a sum of ₹ 304.50 crores in the name of India bulls Power Ltd by transferring it from another company without any tax consequence. The assessee is one of the layers used by the India bulls group for doing this. However as the case of the assessee is concerned it has incurred that loss on forfeiture of the share warrant to the extent of 25% amounting to ₹ 108.75 crores which was never claimed by the assessee or set of against any other income. Therefore, the appellant company was created only for the reason of transferring money from the group concern to the assessee company and subsequently to another group company, booking loss in the assessee company. The assessee company is used as one of the layer for the above transaction. Therefore, the remedy for the whole transaction does not lie under The Income Tax Act but under some other law. The ground [I] stated by the learned assessing officer clearly shows the scheme of the things wherein a sum of ₹ 108.75 crores or originated from India bulls infrastructure and Power Ltd against issue of 15 crore warrants of India bulls Power Ltd, all group companies, forfeiting a sum of ₹ 304.50 crores by transferring through layers of conduit companies, clearly shows the scheme of things. During the course of hearing, on looking at the strange set of facts, the information was called

> from the assessee with respect to the corporate restructuring and business justification for layering of the funds. Assessee merely submitted that the issue is squarely covered in favour of the assessee by several decisions and once again relying on the decision of the learned CIT - A. As far as the scheme of things goes, it is evident for everybody. Nothing is further required to be mentioned that who is the beneficiary and who is the conduit. Further, it is not the assessee who is to be taxed in its hands, as the real beneficiary is India bulls Power Ltd. which further went into restructuring and scheme of amalgamations."

3. As is manifest from the above, the respondent / assessee although having suffered a loss of INR 108.75 crores, had never sought a Short Term Capital Loss set off consequent to forfeiture of the share warrants. In any case, the transaction came to be subsumed in the Scheme of Merger which came to be sanctioned by the appropriate High Court. In that view of the matter, the amount in question could not have even been taxed in the hands of the respondent / assessee.

4. It is the aforesaid facts which has constrained the ITAT to observe that although the entire transaction appeared to be a sham, the same could not form subject matter of further inquiry or determination under the Income Tax Act, 1961 ["**Act**"].

5. In view of the aforesaid, we find no ground to entertain the appeal. The same fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 4, 2024/MJ