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

\+ ITA 931/2019

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

Through: Mr. Aseem Chawla, SSC with Ms. Pratishtha Chaudhary & Mr. Naveen Rohila, Advs.

versus

NAYAN TRADERS PVT. LTD. ..... Respondent

Through: Ms. Kavita Jha, Mr. Vaibhav Kulkarni, Mr. Akash Shukla, Advs.

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

ORDER

% **10.05.2024**

1. The Principal Commissioner of Income Tax ["**PCIT**"] impugns the order of the Income Tax Appellate Tribunal [**"ITAT"**] dated 26 April 2019 and has suggested the following questions for our consideration:-

(a) Whether on the facts and circumstances of the case and in law, ITAT has erred in deleting disallowance of INR 4,18,50,000/- made by the Assessing officer ["**AO**"] on account of Short Term Capital Loss?

(b) Whether on the facts and in the circumstances of the case and in law, the ITAT has erred in holding that by paying mere 10% amount against share warrants, the assessee had created a definite right in such warrants which could be termed as capital assets within the meaning of Section 2(14) of the Income tax Act, 1 961

["**Act**"]?

(c) Whether on the facts and in the circumstances of the case and in law, the ITAT has erred in not appreciating that the genuineness of the transaction was itself doubtful as both the parties were related and there was no independent documentary evidence to prove genuineness of transaction?

2. The dispute itself emanates from a Short Term Capital Loss which was claimed by the respondent / assessee consequent to the forfeiture of share warrants of M/s Monnet Ispat and Energy Ltd ["**MIEL**"] which were held by it.

3. As is evident from a reading of Para 5 of the judgment impugned before us, the ITAT has found that undisputedly the respondent / assessee had applied for 10 lakh warrants of the aforenoted entity and which were ultimately convertible into an equal number of equity shares of INR 10/- each at a price of INR 418.50/-.

4. The assessee at the time of initial acquisition had paid 10% of the subscription price and thus amounting to INR 41.85 per warrant. At the time when the application for forfeiture was made, the shares of MIEL were roving between INR 138.75/- to INR 154.35/-.

5. The ITAT ultimately finds that it was the aforesaid facts which appear to have constrained the respondent / assessee to apply for forfeiture.

6. As we view the aforesaid, we find that undisputedly, the appellant would have had to invest a sum of over INR 4 crores if it were to continue to hold the shares in question. That however would have made no economical sense, bearing in mind the price range of shares of MIEL at the relevant time.

7. We note that the AO has, while dealing with the issue of Short Term Capital Loss firstly, proceeded on the incorrect premise that the share warrants would not constitute capital assets.

8. However, and while proceeding further to the issue of genuineness of the transaction itself, it chose to take the view that it amounted to a colourable transaction.

9. As we go through the order passed by the AO, we find that the only plausible reason which could be possibly recognised as having weighed upon it was the handout of a dividend amounting to INR 20,48,897/- to the respondent / assessee. The order fails to record or take into consideration, any other details with respect to the payment of dividend. This we observe since it neither discloses whether it was a onetime handout or whether it was the dividend received by the assessee over a period of time and during the period when the share warrants had been held.

10. The other aspect which merits consideration is the AO at the relevant time, basing the view ultimately taken on the judgment dated rendered by the Commissioner of Income Tax (Appeals) ["**CIT(A)** "] vide order dated 22 August 2012 in the case of M/s Pavitra Commercials Ltd.

11. Undisputedly, the said decision no longer holds the field in light of the judgment rendered by the ITAT in **Pavitra Commercials Ltd. v. DCIT** [2014 SCC OnLine ITAT 8722] and where after taking note of the decision of this Court in **Commissioner of Income Tax v. Chand Ratan Bagri** [2010 SCC OnLine Del 4635], the ITAT had allowed the claim of the assessee in that respect and observed as follows:-

> "7. Ground no. 2(e) is on disallowance of claim of short term capital

loss.

7.1. The Ld. Counsel for the assessee has submitted that right to obtain shares is an asset and forfeiture of the same is, extinguishing of a right and hence covered u/s 2(47) (ii) of the Act.

7.2. The Ld.Sr.D.R. relied on the order of the Ld.CIT(A).

7.3. After hearing rival contentions, we hold as follows.

Hon'ble Delhi High Court in the case of *CIT vs. Chand Ratan Bagri* reported in 329 ITR 356 has held as follows.

"More importantly, the second issue as to whether the forfeiture of the convertible warrant amounted to a transfer within the meaning of s.2(47) of the said Act has now been made clear by the Supreme Court in the case of Mrs. Grace Collis (2001) 248 ITR 323 as also by the Karnataka High Court in BPL Sanyo Finance Ltd. (2009) 312 ITR 63. We agree with the interpretation given by the Karnataka High Court in BPL Sanyo Finance Ltd. (supra) and we see no reason to take a different view. The restrictive meaning given to the word transfer by the Supreme Court decision in Vania Silk Mills P.Ltd. (1991) 191 ITR 647 has been over ruled by the larger Bench of the Supreme Court in the case of Mrs. Grace Collis (2001) 248 ITR 323. In the present case, we find that the forfeiture of the convertible warrant has resulted in extinguishment of the right of the assessee to obtain a share in BLB Ltd. It is not a case where the asset itself has been extinguished or destroyed. A share in a company is nothing but a share in the ownership of the company. While the right of the assessee to share in the ownership of the company BLB Ltd. Stands extinguished on account of the forfeiture, the company, with all its assets, continues to exist. The forfeiture only results in one less shareholder. It is not as if the asset in which a share was being claimed was also extinguished. Thus, the second point urged by the ld.counsel for the Revenue is also not tenable. In view of the foregoing reasons no substantial question of law arises for our consideration. The appeal is dismissed."

7.4. Respectfully following the judgement of the Jurisdictional High Court, we allow the claim of the assessee. Ground no.2(e) is allowed.

8. In the result assessee's appeal is allowed in part."

12. The appeal taken against the aforesaid order of the ITAT in *Pavitra Commercials* came to be dismissed by this Court on 14 October 2015 while dealing with ITA No. 782/2015.

13. Accordingly and for all the aforesaid reasons, we find that the appeal raises no substantial question of law.

14. It shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 10, 2024/MJ