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

\+ ITA 54/2024 & CM APPL. 4129/2024 (Delay)

THE PR. COMMISSIONER OF INCOME TAX -7

..... Appellant

Through: Mr.Ruchir Bhatia, Sr.SC with Ms.Deeksha Gupta, Adv.

versus

PARIAPUS DEVELOPERS PVT. LTD. ..... Respondent

Through: None.

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

O R D E R

% 01.02.2024

1. We have heard Mr. Bhatia, learned counsel appearing in support of the appeal which seeks to assail the correctness of the order passed by the Income Tax Appellate Tribunal [“**ITAT**”] dated 03 September 2020.

2. The appellant seeks to pursue this appeal on the following two proposed questions of law:-

> (a) Whether on the facts and circumstances of the case and in law, the ITAT is correct in holding that the expenditure of finance cost having no nexus with income from other sources is allowable as deduction to the assessee under section 57(iii) of the Income Tax Act, 1961 **[**“**Act**”**]**?

(b) Whether on the facts and circumstances of the case and in law, the ITAT is correct in deleting the disallowance under section 36(l)(iii) of the Act without recognizing of the facts that the purpose of long term borrowings and advances given to sister concern is not under the purview of Business Expediency?

3. However, before us the only issue which is addressed was with respect to the deductions claimed under Section 57(iii) of the Act. We note that in so far as the question of unsecured loans and interest thereon is concerned, the ITAT has returned the following findings:-

> *"16. We have carefully considered the rival contention and perused the orders of the lower authorities. Only reason of disallowance given by learned lower authorities is that assessee has incurred interest cost of Rs. 376,982,874/- on unsecured loans amounting to Rs. 512 crores and assessee has earned interest of Rs. 376,951,117/- on loans and advances of Rs. 344 crores, therefore, it is apparent that the difference of Rs. 512 crores of unsecured loan on which interest is paid is not commensurate in with interest received on loans and advances of Rs. 344 crores. Above finding of the learned lower authorities are not correct because of the reason that out of Rs. 512 crores, a sum of Rs.147.37 crores is in the form of unsecured interest-free loans taken from directors and shareholders of the appellant company on which no interest is paid. Therefore, to that extent, the unsecured loan on which interest is paid taken by the lower authorities of Rs. 512 crores is required to be reduced by a sum of Rs. 147.37 crores. This fact is evident from note 5 of the balance sheet submitted before us at page number 119 of the paper book. This clearly is now to be seen with respect to interest-bearing funds of Rs. 364 crores (Rs 512 Cr- Rs 147 Crs) and is required to be compared with interest bearing advances of Rs.344 crores. This leaves us with the difference of Rs. 20 crores. This is also answered at same note number 5 of the balance sheet which clearly shows that at the beginning of the year the unsecured loan which does not have any interest cost of Rs. 166 crores is reduced to Rs. 147 crores at the end of the year. Further there is in an increase of 20 crores in interest bearing advances. Therefore, it cannot be doubted that assessee has utilised the borrowings during the year in reutilizing above funds. It is further apparent that Rs. 190 crores is outstanding in last year borrowed from India Bulls*

and housing finance Ltd which is locked in advances of Rs. 120 crores in IIC Ltd and Rs. 70 crores in Rattan and India Power Ltd. On both these unsecured loan and unsecured advances the rate of interest paid and received is @ 13%. Further during the year assessee has borrowed Rs.175 crores, out of which Rs. 75 crores is borrowed from STCI Ltd at 11% interest rate and further Rs.100 crores from Citibank at the rate of 10%. Out of this, assessee has granted loan of Rs.104 crores to IIC Ltd at the rate of 13%, Rs. 49.70 crores were advanced to Rattan India Power Ltd at the rate of 13% and to Ms. Saroj Jain Rs.75 lakhs at the rate of 12%. Therefore net utilisation of new loan of Rs.175 crores is used in interest-bearing advances of Rs. 154 crores. Further, Rs. 20 crores have been advanced during the year at the rate of 13% to M/s. yantra energetics private limited. These above facts are traceable and can be culled out from the balance sheets and notes thereto of the assessee on the face of it. Further, the assessee has also submitted a chart of interest charged which also supports the view that advances given to the sister concern or associated concerns at interest are sourced from interest-bearing loans obtained by the assessee. It is also undisputed fact that the total interest received by the assessee of Rs. 376,982,874/- is taxed under the head income from other sources by revenue. As assessee has utilised interest-bearing funds for the purpose of making investment/giving advances to the sister concern on interest, which is charged to taxed under the head income from other sources, assessee is entitled to deduction u/s 57 (iii) of the act of any expenditure which is not in the nature of capital expenditure, if it is laid out and expended wholly and exclusively for the purpose of making or earning such income. Undisputedly there is no claim by the revenue that above expenditure is in the nature of capital expenditure. The interest income earned by the assessed is from loans and advances given to sister concern which is shown by the assessee to have been financed by obtaining loan on Interest from other parties. Therefore, such interest paid on unsecured loan is laid out and expended wholly and exclusively for the purpose of making an earning such interest income."

4. It has, thus, come to conclusively hold that the interest income which was earned by the assessee was from loans and advances made to sister concerns which in turn had been financed by obtaining loans on interest from other parties. Bearing in mind the aforesaid facts, we find no error in the view taken by the ITAT.

5. The appeal, along with pending application, consequently fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 1, 2024/MJ