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

\+ ITA 131/2024

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

Through: Mr. Sanjay Kumar, Ms. Esha, Ms. Hemlata Rawat, Advs.

versus

CHATURANAN INDUSTRIES LTD. ..... Respondent

Through: Appearance not given

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

O R D E R

% 21.02.2024

1. The Commissioner seeks to question the correctness of the view expressed by the Income Tax Appellate Tribunal ["**ITAT**"] in the impugned judgment dated 30 September 2021 and proposes the following questions of law for our consideration:-

> "A. Whether on the facts and under the circumstance of the case and in law, the Ld. ITAT is justified in holding that the share warrant is a capital asset without looking into the amount of payment vis-a-vis total value of share warrant which is necessary for creating a legal right in such warrants?
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> B. Whether on facts and under the circumstances of the case and in law, the Ld. ITAT is justified in allowing claim of loss on forfeiture of part paid share warrants of an associated entity amounting to Rs.4, 18,50,000/- without adjudicating on the issue of entire transaction being a colourable device:
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> C. Whether on facts and under the circumstances of the case and in law, the Ld. ITAT is justified in allowing claim of loss on forfeiture of part paid share warrants of an associated entity M/s Monnet Ispat and Energy Ltd. which itself financed the investment and even the dividend received therefrom was ploughed back in the form of share warrant and hence entire transaction of part payment for share warrants and forfeiture thereof was a colourable device?

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D. Whether on facts and under the circumstances of the case and in law, the loss on forfeiture of part paid share warrants of an associated entity M/s Monnet Ispat and Energy Ltd. is required to be taxed in the hands of beneficiary as capital gain amounting to Rs.4,18,50,000/- for which Hon'ble Court may kindly be pleased to issue necessary directions."

2. We note that the ITAT while dealing with the issue of Short Term Capital Loss has held as follows:-

"10. We have heard the rival contention and perused the records. The Revenue has not controverted the fact that similar addition was made in the case of group companies M/s Pavitra Commercial Ltd. for AY 2009-10. However, the Tribunal in that case in ITA No.5389/Del/2012, vide its order dated 10/12/2014 has allowed the Short-Term Capital Loss on the forfeiture of Convertible Share Warrants. The relevant content of the Tribunal are reproduced as under:-

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

Hon'ble Delhi 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 Section 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 ward 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

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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."

11. This order of the Tribunal was confirmed by the Hon'ble Delhi High Court in ITA No.782/2015 by observing as under:-

"3. In the impugned order, the ITAT has relied upon the judgment of this Court in CIT vs Chand Ratan Bagri (2010)329 ITR 356(Del), which holds that the share warrant is a capital asset. It is stated that the Revenue has not filed an appeal against the said judgment on account of the low tax effect.

4. Be that as it may, since the aforementioned judgment of this Court holds the field no substantial question of law arises in this appeal.

5.The appeal is dismissed."

3. In view of the aforesaid, we find no merit in the instant appeal. It shall consequently stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

FEBRUARY 21, 2024/neha

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