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* **IN THEHIGH COURTOF DELHIAT NEW DELHI**

\+ ITA 712/2019

THE PR. COMMISSIONER OF INCOME TAX -3.....Appellant

Through: Mr. Sunil Agarwal, Mr. Shivansh B. Pandya, Mr. Viplav Acharya, Ms. Priya Sarkar & Mr. Utkarsh Tiwari, Advs.

Versus

DALMIA HOUSING FINANCE LTD. .....Respondent

Through: Ms. Rano Jain, Mr. Venketesh Chaurasia & Mr. Saksh Rustagi, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

O R D E R

% 05.05.2025

1. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**Act**] impugning an order dated 15.11.2018 [**impugned order**] passed by the Income Tax Appellate Tribunal [**ITAT**] in ITA No.2258/Del/2017 in respect of Assessment year [**AY**] 2012-13.

2. The Assessee had filed its return of income for AY 2012-13 on 28.09.2012 declaring a loss of ₹1,66,73,547/-. The Assessee’s return was picked up for scrutiny and the Assessing Officer [**AO**] framed an assessment order dated 03.02.2015 under Section 143(3) of the Act determining the Assessee’s total income chargeable to tax for AY 2012-13 at ₹29,18,08,480/. The additions made to the Assessee’s declared income included the following additions:

(a) Addition of ₹12,08,25,003/- on account of discrepancy in trade payable to M/s India Bulls Financials Services Ltd. [**IBFSL**]; and,

(b) Addition of ₹17,07,05,885/- on account of unexplained payment made to IBFSL.

3. The Assessee preferred an appeal against the assessment order before the learned Commissioner of Income Tax (Appeals) [**CIT(A)**]. However, the Assessee was unsuccessful. The learned CIT(A) passed an order dated 28.02.2017 dismissing the Assessee's challenge to the aforementioned additions on the ground that it had been unable to substantiate the same.

4. It is the Assessee's contention that the fact that the IBFSL did not reflect the amounts payable by the Assessee was on account of the fact that its group companies had discharged the liability towards IBFSL. However, there was no remission of liability and the Assessee would require to discharge the liability towards its group companies that had made payments to IBFSL

5. The Assessee filed further appeal against the appellate order dated 28.02.2017 before the learned ITAT, which was allowed by the impugned order.

6. The relevant extract of the ITAT's impugned order is set out below:

> "11. We have heard both the parties and perused all the relevant material available on record. During the assessment proceedings the assessee filed the details of sundry creditors, vide letter dated 01.12.2014 giving therein the name, address, amount due, nature of liability and other remarks. In response to notices issued u/s 133 to Indiabulls Financial Services Ltd. and India Bull Services Ltd., the said parties replied that nothing was receivable by them from the assessee. The copy of the account was filed by Indiabulls Financial Services Ltd. during the assessment proceedings. The assessee replied vide letter dated 15.12.2014 that it was just a case of restructuring of liability and does not tantamount to any evasion of tax. Ignoring the explanation and evidences filed by the assessee, the Assessing Officer made the addition. From the records which were produced before the

Revenue authorities it can be seen that since a number of group entities were indebted to Indiabulls Securities, on the basis of a settlement agreement, the payments were made by the other group companies on behalf of the assessee company. But the group was not aware of this fact that by which entity, these amounts paid, were being credited by the Indiabulls, and therefore, the assessee company did not close lndiabull's account in its books. As a result of payment made by group companies on behalf of the assessee and appropriated by Indiabulls, the outstanding amount in the books of Indiabulls reduced to NIL. But the assessee company has to repay its sister companies who have made the payments and therefore, the name of sister company was reflected in the books of the assessee. The detailed evidences in this regard were filed before the Assessing Officer as well as the CIT(A).The details of payments made on behalf of the assessee by sister concerns were also reflected in the documents filed by the assessee company before the Revenue authorities. Thus, the assessee has disclosed all the details in respect of the loans taken from India Bulls. Therefore, the Assessing Officer was not correct in making this addition. The CIT(A) also ignored the same. Therefore, we set aside the order of the CIT(A). Ground No.3 is allowed.

12. As regards to Ground No.4 relating to addition on account of payment to India Bulls Rs.17,07,05,885/-, the Ld. AR submitted that this addition was made by the Assessing Officer stating that since an amount of Rs.17,07,05,885/- is appearing in the books of Indiabulls as having been received from the assessee, the assessee has made the payment out of its undisclosed income and hence added the same. The Ld. AR submitted that as explained in the ground No.3, the payments were made by the sister companies and documentary evidences in this regard were filed before the Assessing Officer as well as before the CIT(A).The Ld. AR further submitted that once having made the addition on account of the same creditor, again making the addition on account of payment to the same creditor also tantamount to double addition.

13. The Ld. DR relied upon the order of the CIT(A) as well as the Assessment order. The Ld. DR submitted that the Assessing Officer has rightly made addition on account of payment to India Bulls amounting to Rs.17,07,05,885/ -. The Ld. DR submitted that since an amount of Rs.17,07,05,885/- is appearing in the books of Indiabulls as having been received from the assessee, the assessee has made the payment out of its undisclosed income and hence added the same.

> 14. We have heard both the parties and perused all the relevant material available on record. The addition made in respect of Rs.12,08,25,003/- and addition of Rs.17,07,05,885/-, both the addition emerged from the same transaction thereby leading to double addition on the same ground. Since we have given our finding in respect of Ground No.3, the same reasoning is applicable in respect of this ground as well. Ground No.4 is allowed."

7. As is apparent from the above, it is the Assessee's case that a settlement was arrived at group level with IBFSL and the amounts payable to IBFSL by the Assessee had been discharged by the Assessee's group companies by making payments to IBFSL. However, the Assessee had not passed the necessary entry in its books to reflect the outstanding as payable to its sister concern instead of IBFSL. Thus, in other words, it is the Assessee's case that although the books of IBFSL did not reflect the amount receivable from the Assessee, the same was on account of the liability being discharged by other entities. Therefore, the Assessee would now require to reflect the amounts that were owed to IBFSL as owed to its group company(ies) that had discharged the said liability.

8. The AO had proceeded on the basis that the liability towards IBFSL had been repaid by the Assessee from undisclosed sources therefore the credit outstanding was required to be added to its returned income. It is clear from the above that the question whether the aforesaid additions could be sustained turns on a factual controversy whether in fact the group companies of the Assessee had discharged the liability towards IBFSL and the Assessee is now required to reflect the amount owed to IBFSL to its group companies. Clearly if the factual findings as set out by the learned ITAT in the impugned order are correct, no substantial question of law would arise for consideration of

this court.

9. Mr. Agarwal, learned counsel appearing for the Revenue submits that the authorities below have not examined the question whether there was any remission of liabilities by virtue of the settlement arrived at by the group companies with IBFSL.

10. He submits that the fact that the settlement had been arrived as has been noted and if the amount paid to IBFSL at a group level was less than what was reflected in the books, then an addition is required to be made on account of remission of liability and this aspect has not been considered by the AO.

11. The learned counsel for the Assessee submits that there has been no remission of liability and the entire amount as reflected in the books of the Assessee was repaid to IBFSL. Since this aspect has not been examined, we consider it apposite to remand the matter to AO for examining the question that there was any remission of liability by virtue of the settlement arrived at between the Assessee's group companies and IBFSL and if so, whether the amount of remission is required to be added to the Assessee's income.

12. The matter is remanded to the AO for the aforesaid limited enquiry. The AO shall examine the aforesaid aspect and pass an appropriate order.

13. The petition is disposed of in the aforesaid terms.

14. This order is passed with the consent of the learned counsel for the parties.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 5, 2025

'gsr' *Click here to check corrigendum, if any*