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

% *Date of Decision : 13.05.2025*

\+ **ITA 129/2024**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2
.....Appellant
Through: Mr Sanjay Kumar, SSC, Ms Monica Benjamin and Ms Easha Kadian, JSCs for the Revenue.

versus

R B FARMS AND ESTATES PVT. LTD.
.....Respondent
Through: Mr Rohit Jain and Mr Saksham, Advocates.

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

VIBHU BAKHRU, J. (*ORAL*)

CM APPL. 10566/2024

1. For the reasons stated in the application, the delay of 250 days in refiling the above captioned appeal is condoned.

2. The application stands disposed of.

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3. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**], *inter alia*, impugning an order dated

21.10.2021 [**impugned order**] passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA No.7144/Del/2018 in respect of Assessment Year [**AY**] 2015-16.

4. The impugned order is a common order, which was passed by the learned ITAT in two separate appeals preferred by the Revenue, being ITA No.7144/Del/2018 in respect of AY 2015-16, and ITA No.7145/Del/2018 in respect of AY 2016-17. The present appeal is confined to the impugned order in so far as it relates to ITA No.7144/Del/2018 in respect of AY 2015-16.

5. The Revenue's appeal before the learned ITAT arose from the common order dated 13.08.2018 passed by the Commissioner of Income Tax, New Delhi–27(Appeals) [**CIT(A)**] in respect of AY 2015-16 and 2016-17.

6. The CIT(A) had allowed the Assessee's appeal in respect of aforesaid two assessment years and set aside the additions made by the Assessing Officer [**AO**] under Section 68 of the Act on account of unsecured loans reflected as 'Receipts' from two entities - M/s Earthworks Metallurgicals Private Limited [**EMPL**] and M/s Tachyons Trading Private Limited [**TTPL**]. The books of account of the Assessee for the Financial Year [**FY**] 2014-15 reflected that it had received a sum of ₹8.25 Crores from EMPL and ₹2.71 Crores from TTPL. Thus, in aggregate, the Assessee had received a sum of ₹10.96 Crores as unsecured loans, which the AO found were not accounted for. However, the said additions were deleted on the ground that one of Assessee's group company had disclosed that it had generated

unaccounted cash by inflating purchases, which it claimed that part of which had been infused as unsecured loans in the Assessee company through other entities. The said group company – M/s Anand Motor Products Private Limited [**AMPPL**] – had paid the tax on the said income. The disclosure made by AMPPL was accepted by the Income Tax Settlement Commission [**ITSC**] and, therefore, the unsecured loans, which is stated to have been received from the non-genuine entities, were duly explained.

7. In this regard, the learned ITAT had held as under:-

> "20. It is an undisputed fact that before the ITSC, the group company M/s.AMP Motor Private Limited have taken a plea that it has been inflating purchases from which it has generated cash. We are of the opinion that the cash so generated has been reintroduced in the books of the assessee in the form of unsecured loan from the two companies. Since the group company has paid taxes on such inflated purchases, we do not find any reason why the same amount when re-introduced in the books should be taxed again."

8. Aggrieved by the impugned order passed by the learned ITAT, the Revenue has preferred the present appeal.

QUESTION OF LAW

9. The present appeal was admitted by an order dated 21.02.2024 on the following question of law:-

> "A. Whether on the facts and circumstances of the case and in law, the ITAT was justified in deleting the addition of Rs.10,37,50,000/- made by Assessing Officer ["AO"] under Section 68 of the Act and taken a wholly untenable view?"

RELEVANT FACTS

10. Search and seizure operations under Section 132 of the Act were conducted on 16.09.2015 at the residential and business premises of entities constituting the AMPPL group. Since the Assessee was one of the constituent entities of the said group, the authorisation under Section 132 of the Act was also issued in the name of the Assessee. And, its premises bearing the address 2686, Kashmere Gate, Delhi – 110006 was searched on 16.09.2015.

11. Thereafter, the AO issued the notice under Section 153A of the Act calling upon the Assessee to file its return. The Assessee complied with the said direction and filed its return of income on 24.05.2017 declaring an income of ₹83,59,470/-. The Assessee also furnished the requisite information as required.

12. The Assessee noticed that during the FY 2014-15, the Assessee had reflected the receipt of unsecured loans aggregating ₹10.96 Crores from two separate companies: ₹8.25 Crores from EMPL and ₹2.71 Crores from TTPL. The AO found that the said transactions of receipt of unsecured loans are sham transactions as neither of the two entities were found to be genuine.

13. During the course of enquiry, summons were issued under Section 131 of the Act to the directors of EMPL. However, the notices and summons were received back unserved as the addresses provided was not traceable. Similarly, the enquiry in respect of TTPL also yielded same results and the directors of the said company were also untraceable.

14. It is material to note that there is no cavil that the said companies are

not-genuine and the Assessee does not dispute the said finding of the AO.

15. It is also material to note that during the course of search, statement of Sh Gurmeet Singh Anand, who is the promotor of AMPPL was recorded and he too confirmed during his statement that he is agreeable to accept the tax liability arising out of a sum of ₹11.00 Crores to buy peace of mind.

16. During the course of assessment proceedings, the Assessee informed the AO about the source of the secured loan – cash proceeds from bogus and inflated purchases by its group company AMPPL, which was channelised as unsecured loans from dummy and shell companies.

17. AMPPL filed an application before the ITSC under Section 245C of the Act, *inter alia*, surrendering the said amount to tax. However, the AO did not accept the said contention as on the date of the passing of the assessment order, the application filed by the AMPPL had not been accepted by the ITSC. Accordingly, the AO framed the assessment order dated 29.12.2017 under Section 153A read with Section 143(3) of the Act adding a sum of ₹10,37,50,000/- under Section 68 of the Act and assessing the Assessee's income chargeable to tax in respect of AY 2015-16 at ₹11,21,09,470/-.

18. The Assessee preferred an appeal against the said assessment order. As noted above, the Assessee's contention that the amount of unsecured loan could not be treated as unexplained in view of the unequivocal statement made by AMPPL explaining the source of the said amount and further surrendering the same to tax, was accepted by CIT(A).

REASONS AND CONCLUSIONS

19. As noted above, the Assessee's contention that addition of the unsecured loan from sham companies could not be taxed under Section 68 of the Act as the source had been explained by AMPPL rests on the disclosures made by AMPPL before the ITSC.

20. A copy of the order dated 26.03.2018 passed by the ITSC, pursuant to an application filed by AMPPL for the AY 2009-10 to 2016-17 was handed over by the learned counsel for the Assessee during the course of these proceedings. We consider it relevant to refer to paragraph 4.4.1 of the said order, which is reproduced below. The relevant extract of the same is set out below:-

> "It was also found that M/s RB Fanns & Estates Pvt. Ltd., a group concern of the AMP Group had received unsecured loans worth Rs 10.96 crores from two non genuine companies during FY 2014-15. Both these companies were found to be not existing at their respective addresses. Further, the directors of these companies were also not traceable at the addresses mentioned in the MCA website, clearly indicating the non genuine nature of the transactions.
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> In the SOF, the applicant has admitted that the share capital of Rs.10.25 crores in M/s Anand Motor Products Pvt. Ltd., Rs.8.75 crores in M/s AMP Motors Pvt. Ltd. & also the loan of Rs.10.96 crores in M/s RB Farms Pvt. Ltd. (totaling Rs.29.96 crores) were only arranged and the funds of the applicant company Itself. It has been submitted that income generated by way of bogus purchases debited to the account was utilized for

> introduction of bogus share capital and bogus loan. It has been submitted that these represent only application of fund, as reflected in the cash flow statement. It is found from cash-flow statement that the share capital and the unsecured loan is shown as application of the undisclosed income of the applicant. However, as already discussed earlier the applicant has shown speculation Income of Rs 50 lakhs from real estate transaction in the A.Y. 2010-11 just to match the application of funds on account of share capital in this year.
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> *** *** ***
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> 4.4.3. Commission's Finding : We have heard both the parties and considered their submissions. It is observed that the applicant has explained the introduction of share capital through generation of cash from inflation of purchases. The cash flow statement submitted before the Commission has been verified by the PCIT. Hence, no further addition is called for on this issue."

21. The extracts of the aforesaid order as set out above were corrected in terms of the corrigendum issued by ITSC on 08.08.2018. The relevant extract of the said corrigendum is set out below:

> **"The above part of the order u/s 245D(4) may be correctly read as under-**
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> 4.4. ….It was found that M/s. Anand Motor Product Pvt Ltd, M/s AMP Motors Pvt. Ltd., had received share capital from certain companies to the extent of Rs 19 crores in the F.Y. 2009-10 & 2014-15 and M/s RB Farms Pvt. Ltd., a group concern of the AMP Group had received unsecured loans worth Rs. 10.96 crores from two non genuine companies during AY 2014-15."

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> **The above part of the order u/s 245D(4) may be correctly read as under:-**
> "4.4.3 We have heard both the parties and considered their submissions. It is observed that the applicant has explained the introduction of share capital and unsecured loan through generation of cash from inflation of purchases. The cash flow statement submitted before the Commission has been verified by the CIT. Hence, no further addition is called for on this issue."

22. It is clear from the above that AMPPL had disclosed the source of funds that were infused as unsecured loans in the Assessee as cash generated from inflating purchases which was routed through sham entities as unsecured loans in the Assessee.

23. It is also relevant to refer to Section 68 of the Act, which reads as under:

> **68. Cash Credits.**
> Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:
>
> Provided that where the sum so credited consists of loan or borrowing or any such amount, by whatever name called, any explanation offered by such assessee shall be deemed to be not satisfactory, unless.-

(a) the person in whose name such credit is recorded in the books of such assessee also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided further that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless-

(a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and

(b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:

Provided also that nothing contained in the first proviso or second proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of section 10."

24. As is apparent from the plain reading of Section 68 of the Act, the same is applicable only where the Assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the AO, satisfactory. In the present case, ostensibly the amount of

unsecured loans had been received from two sham companies. However, the Assessee has explained that the real source of the same is cash generated from inflating purchases by AMPPL. Thus, the credits reflected in the books of the Assessee, were received from AMPPL although, through the route of two sham companies. There is no dispute that AMPPL and Assessee are part of the same group as is also acknowledged by the AO in the assessment order, which notes that the search was conducted in AMP group of entities.

25. Once an entitiy has made a disclosure and has availed the benefit of settlement under Chapter XIXA of the Act, the amount as disclosed can no longer be considered as unexplained.

26. The Assessee's case is not required to be examined as a stand alone case by ignoring the disclosures made by its group company, which has admittedly introduced the funds and debited in the books of account of the Assessee.

27. We may also refer to the decision of the Coordinate Bench of this Court in ***The Pr. Commissioner of Income Tax-Central-1 v. Surya Agrotech Infrastructure Limited : Neutral Citation : 2023:DHC:6480-DB*** where in the similar circumstances, the additions made in respect of the funds that were already brought to tax in related entity, were set aside. In the said case, the undisclosed income of a group of companies had been routed and introduced as share capital in Surya Agrotech Infrastructure Limited, the assessee in the said case. The statement of one of the promotors had been recorded who conceded that the funds had been routed by way of

accommodation entries and introduced as share capital. In the aforesaid context, this Court had held as under :-

> "20. To recapitulate, in the present case, the material on record reflects that the Assessing Officer throughout the proceedings placed heavy reliance on the statement of Shri Shekhar Aggarwal to the effect that the undisclosed income of Priya Gold Group of Companies was routed in the form of share capital of the respondents/ assessee companies by way of accommodation entries from Kolkata based entry provider companies and such share capital is liable to be taxed as income in the hands of the respondents/ assessee companies. At the same time, it is also not in dispute that Surya Food & Agro Limited, the flagship company of the group has already offered the said undisclosed income to the tune of Rs.49,12,00,000/- to tax before the Settlement Commission, which income was enhanced by the Commission to Rs.55,77,00,000/- and the final order of the Settlement Commission having not been challenged by either side has attained finality. It is also not in dispute that before the Settlement Commission the flagship company specifically declared that the undisclosed income which was offered before the Settlement Commission had been applied by way of share capital to the group entities, namely the present respondents/assessees. Further, before the Settlement Commission, the flagship company also explicitly stated that there is no other undisclosed asset found or application of funds by the group, which statement remains unchallenged till this stage.
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> 21. In view of aforesaid, the irresistible conclusion is that since the undisclosed income which is subject matter of the present dispute had already been taxed in the hands of the flagship company

Surya Food & Agro Ltd., it cannot be again subjected to tax in the hands of the respondents/ assessee companies in the form of application of the said income as their share capital. Accordingly, the question as framed above is answered against the appellant/revenue and in favour of the respondent/assessee.

22. The above captioned appeals are disposed of in the aforementioned terms."

28. In view of the above, we find no ground to interfere with the concurrent findings of the CIT(A) as well as the learned ITAT that the unsecured loan to the tune of ₹10.96 Crores as reflected in the Assessee's books of account were explained and cannot be considered as undisclosed income. Moreover, the funds had already been taxed in the hands of one of the group companies where income was generated.

29. In view of the above, the question of law as noted above, is answered in the affirmative; that is, in favour of the Assessee and against the Revenue.

30. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 13, 2025
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Click here to check corrigendum, if any