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

\+ ITA 192/2024

PR. COMMISSIONER OF INCOME TAX-12 .....Appellant
Through: Mr Sanjay Kumar, SSC with Ms Monica Benjamin, Ms Easha Kadian and Ms Nancy Jain, Advocates.

versus

THE COOPERATIVE STORES LTD. .....Respondent
Through: Mr Rahul Kumar and Ms Kajal Kumari, Advocates.

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

O R D E R

% **15.04.2025**

1. The Revenue has filed the present appeal impugning an order dated 14.06.2023 passed by the learned Income Tax Appellate Tribunal [**ITAT**] in ITA No.1440/Del/2017 [**the impugned order**] in respect of Assessment Year [**AY**] 2011-12.

2. The Revenue had preferred the said appeal against an order dated 18.12.2016 passed by learned CIT(A)-18, New Delhi [**CIT(A)**] in an appeal No.182/2014-15, which was preferred by the Assessee against an assessment order dated 31.03.2014 passed under Section 143(3) of the Income Tax Act, 1961 [**the Act**]. The Assessing Officer [**AO**] had made an addition of ₹68.51/- crores on account of the amounts extended by the Government, which was stated to have written off by the Assessee.

3. The AO had held that the loan of ₹68,51,00,000/- had been taken by the Assessee for the purposes of business and the said liability had since

ceased and therefore, the same was required to be treated as income under Section 28(iv) of the Act. The Assessee, inter alia being aggrieved by the said addition, had preferred an appeal before the learned CIT(A). The Assessee claimed that since the original receipt was on account of capital nature, its waiver could not be taxed as a revenue receipt. Ground no.3 as urged by the Assessee before the learned CIT(A) – which is relevant for the purposes of the present appeal – is set out below:

> "3) That the Ld.AO has erred both in law and on facts in making addition of loan of Rs.68,51,00,000/- received from The Central Government in past years and written-off during the previous year in the books of accounts as the Central Government waived the loan amount, treating the same as revenue receipts invoking the provisions of Section 28. Since the original receipt was on account of capital nature, its waiver does not have the quality of changing the same into a revenue receipt."

4. The learned CIT(A) remanded the matter to AO to examine the nature of loan before granting the relief as per law. The Revenue appealed the said decision before the learned ITAT. However, the said appeal was dismissed as the learned ITAT found no ground to interfere with the order passed by the learned CIT(A).

5. Aggrieved by the said decision, the Revenue has preferred the present appeal, *inter alia,* projecting the following question of law for consideration of this Court:

> "B. Whether on the facts and in the circumstances of the case, the Ld. ITAT has erred in law in deleting the additions on the loan amount sanctioned by the Union Government of INR 68,51,00,000/- held by the Assessing Officer as value of benefit arising from business under Section 28(iv) of the Act?"

6. By an order dated 20.03.2024, the present appeal was admitted on the aforesaid question of law as projected by the Revenue.

7. As is apparent from the above, the aforesaid question of law does not arise as the learned CIT(A) had merely remanded the matter to the AO to consider whether any addition was required to be made considering the law as set out in various decisions as mentioned in the order dated 18.12.2016 passed by the learned CIT(A).

8. During the course of the proceedings, the learned counsel appearing for the Assessee submitted that the controversy is illusory as, in fact, the Assessee had not written off an amount of ₹68.51 crores in its books of accounts and therefore, the question of adding the income on account of cessation of liability does not arise.

9. The said contention was noted by this Court in an order dated 28.03.2025, which reads as under:

> "1. The learned counsel appearing for the respondent (Assessee) submits that the write off of an amount of ₹68.51 crores, which is the heart of the controversy in the present petition, has not been written off in the books of account and finds mention in the balance sheet for the year ended on 31.03.2019.
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> 2. The entire controversy is based on whether a sum of ₹68.51 crores is required to be added to the income of the Assessee on account of the said loan being written off in the books of account. Clearly, if the amount has not been written off, there will be no question arising on account of writing off the said amount."

10. Mr Kumar, the learned counsel appearing for the Revenue submits that he has been unable to obtain any instructions as to whether the amount was written off by the Assessee.

11. We note that the learned CIT(A) had remanded the matter to the AO

to consider the facts as regarding the grant of loan and had observed that if the loan was granted for the capital purposes, its cessation could not be taxed as the income. There is no cavil with this proposition.

12. As noted above, the learned ITAT has not interfered with the order passed by the learned CIT(A). In the aforesaid circumstances, no substantial question of law arises. We, however, consider it apposite to direct the AO to also examine the Assessee's contention that the amount of ₹68.51 crores has not been written off in its books for considering whether the said amount could be taxed as income.

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

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 15, 2025
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Click here to check corrigendum, if any