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# THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 01.04.2013

\+ **ITA 607/2012**

**COMMISSIONER OF INCOME TAX** ..... Appellant

**versus**

**ARADHANA DRINKS & BEVERAGES PVT. LTD.** ..... Respondent

**Advocates who appeared in this case:**

For the Appellant : Mr Abhishek Maratha, Sr. Standing Counsel with Ms Anshul Sharma, Advocate.

For the Respondent : Mr C. S. Aggarwal, Sr. Adv. with Mr Vishal Kalra and Mr Prakash Kumar, Advocates.

**CORAM:-**
**HON'BLE MR JUSTICE BADAR DURREZ AHMED**
**HON'BLE MR JUSTICE R.V.EASWAR**

**JUDGMENT**

**BADAR DURREZ AHMED, J (ORAL)**

1. This appeal by the revenue is directed against the order dated 21.04.2011 passed by the Income Tax Appellate Tribunal, New Delhi in ITA No.3139/Del/2007 pertaining to the assessment year 2004-05. The assessing officer had made an addition of ₹22.58 crores under section 69 of the Income Tax Act, 1961 on account of alleged unexplained investment. It was the case of the revenue that while the

respondent/ assessee had disclosed that it had paid a sum of ₹41.80 crores, in fact, it had purchased assets worth ₹64.38 crores and, therefore, there was an unexplained investment of ₹22.58 crores (₹64.38 crores minus ₹41.80 crores).

2. The assessee had placed the value of the total assets purchased by it by way of a slump purchase in the following manner: -

"Total value of assets as recorded in the books of accounts

| *S.No.* | *Particulars* | *Amount ₹ Crores* |
|---|---|---|
| *1.* | *Plant & Machinery* | *13.82* |
| *2.* | *Goodwill* | *50.56* |
| *3.* | *Total value* | *64.38"* |

3. The sum of ₹41.80 crores was paid by discharge of the liabilities as per Schedule III of the Business Transfer Agreement between the respondent/ assessee and Dhillon Kool to the extent of ₹35.30 crores and the remaining ₹6.50 crores was paid directly by the respondent/ assessee to the Dhillon Kool in terms of clause 6.3.3 of the Business Transfer Agreement.

4. Apart from the said sum of ₹41.80 crores, the respondent/ assessee had also taken over the liabilities as per Schedule II of the

Business Transfer Agreement to the extent of ₹15.80 crores. In addition, the respondent/ assessee took on the liabilities/ loans against specific assets taken over in terms of clause 1.1 of the Business Transfer Agreement to the extent of ₹5.53 crores. In fact, the Commissioner of Income Tax (Appeals) as also the Income Tax Appellate Tribunal have examined this issue at great length and have concluded on facts that a sum of ₹5.53 crores was in respect of leased assets taken over from Dhillon Kool. Finally, a transaction cost of ₹1.25 crores which had been incurred and had duly been mentioned in books, of accounts, formed part of the slump purchase. In this way, the total figure of ₹6.78 crores (₹5.53 crores plus ₹1.25 crores) was arrived at.

5. As against this, the plant and machinery was valued at ₹13.82 crores on fair value basis. The balance amount of ₹50.56 crores (₹64.38 crores minus ₹13.82 crores) was treated as goodwill.

6. The learned counsel for the revenue/ appellant contended that while there is no dispute with regard to amount of ₹41.80 crores which was actually paid by the assessee to Dhillon Kool as also with regard to the sum of ₹15.80 crores which was mentioned in Schedule II of the

Business Transfer Agreement and ₹1.25 crores towards transaction costs, there is a dispute with regard to the sum of ₹5.53 crores which has been allegedly incurred by the respondent/ assessee towards liabilities in respect of assets referred to in clause 1.1 of the Business Transfer Agreement. He submitted that the only liabilities that have been mentioned in clause 1.1 are those which are indicated in Schedule II to the Business Transfer Agreement. And, according to the learned counsel for the appellant, the total extent of liabilities mentioned in Schedule II to the Business Transfer Agreement is only ₹15.80 crores, which does not include the sum of ₹5.53 crores and, therefore, to this extent, the authorities below have erred in not including this figure.

7. Mr Aggarwal appearing on behalf of the assessee submitted that the figure of ₹5.53 crores has no mystery attached to it. He submitted that the said sum is included in and referred to in the Business Transfer Agreement itself. Clause 2.2.2 of the Business Transfer Agreement specifically speaks of leased assets. The said clause reads as under: -

> "2.2.2 Leased Assets
>
> The Seller shall transfer to the Buyer all the rights, interest and benefits that the Seller has in the Leased Assets at closing to and in favour of the Buyer on the same terms and conditions as enjoyed by the Seller in respect of such

> Leased Assets and shall be responsible to get all requisite paper work/ documentation executed by the concerned Lessor/s so as to perfect the title of the Buyer as lessee of such Leased Assets at closing."

8. From the above extract it is apparent that the assessee acquired all the rights, interests and benefits which the seller Dhillon Kool had in the leased assets. It was also indicated by Mr Aggarwal that definition of "asset" in clause 1.1 of the Business Transfer Agreement specifically included the assets set-out in Schedule I whether owned by the seller or leased. He also drew our attention to paragraph 7 of the order of the Commissioner of Income Tax (Appeals) wherein it is specifically recorded that the assessee had taken over (a) the liabilities of ₹15.80 crores and (b) the liabilities/ loans against specific leased assets of ₹5.53 crores. The assessee had also incurred transaction costs of ₹1.25 crores. Our attention was also drawn to the paragraph 12 and 13 of the Tribunal's order which reads as under: -

> "12. We have considered the rival contentions of both the parties and have carefully perused the orders of the authorities below. It is not in dispute that the value of the total assets taken over by the assessee from DKDB in pursuance to the business transfer agreement on slump sale basis has been determined by the assessee at ₹64.38 crores, which has been allocated to the following assets:

| | | |
|---|---|---|
| (1) | Plant & Machinery | ₹13.82 crores |
| (2) | Goodwill | ₹50.56 crores |
| | Total | ₹64.38 crores |

The assessee had shown above assets to the extent of ₹64.38 crores and a corresponding entry has also been passed towards liabilities side after taking over various liabilities payable by the transferor. In this case, as per agreement, the net amount payable to DKDB was ₹41.80 crores. Over and above the said amount of ₹41.80 crores, the assessee company had taken the liability of the said company namely, DKDB to the tune of ₹15.80 crores as set out in Schedule-II of the agreement. Further, the assessee had also taken over additional liability of ₹6.78 crores representing the liabilities of leased assets of ₹5.53 crores and transaction cost of ₹1.25 crore. All these corresponding entries have been passed by the assessee in its books of account at the opening date of the accounting year. The details of opening book entries as recorded in the books of account of the assessee have been perused by us, and on perusal thereof, we find that the assessee had shown the assets at ₹64.38 crores and a corresponding amount towards liabilities has also been shown.

13. In schedule-II of the agreement, it has been clearly stated that the assessee had taken over the liability of ₹15.80 crores, over and above, the net lump sum price of ₹41.80 crores. The lump sum price of ₹41.80 crores was liable to be discharged by paying the seller's liability listed in Schedule-III to the extent of ₹35.30 as and when they would become payable and the balance purchase price of ₹6.5 crores shall be released or paid by the buyer in the manner as provided in Article 6.3.3 of the agreement. Article 6.3.2 provides that the sum of ₹11.60 crores and ₹60,00,000/- towards sale and excise liability,

and statutory liability respectively shall be paid by the buyer directly to the statutory authorities on the signing of the agreement. In the accounts, the assessee had also shown liabilities taken over of ₹6.78 crores representing the liabilities of leased assets of ₹5.53 crores and transaction cost of ₹1.25 crores. Therefore, the total value of the assets corresponding to the liabilities taken over comes to following amount: -

(1) ₹41.80 crores payable to DKDB including amount of certain liabilities set-out in schedule-II of the agreement.

(2) ₹15.80 crores liability taken over as set out in Schedule-II of the agreement.

(3) ₹6.78 crores Additional liability.

₹64.38 crores"

9. From the above extract it is apparent that the Tribunal had gone to the extent of examining the books of the respondent/ assessee and confirming that the opening entries in the books of the assessee after the slump purchase had shown the assets at ₹64.38 crores as a result of transfer from Dhillon Kool to the respondent/ assessee. In other words, the entire extent of ₹64.38 crores had been accepted both by the Commissioner of Income Tax (Appeals) as also by the Tribunal. These are clear findings of fact and, therefore, cannot be disturbed unless and until some perversity is pointed. The learned counsel for

the appellant has not been able to point out any perversity in these findings.

10. In view of the foregoing, we do not find any question of law which arises for our consideration. The appeal is dismissed.

**BADAR DURREZ AHMED, J**

**R.V.EASWAR, J**

**APRIL 01, 2013**
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HIGH COURT OF DELHI
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