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

+ ITA 283/2022

THE PR. COMMISSIONER OF INCOME TAX -1 Appellant

Through: Mr.Ruchir Bhatia, Sr.Standing
Counsel for the Revenue with
Ms.Mansie Jain, Advocate.

versus

DLF UTILITIES LIMITED Respondent

Through: Mr.Aditeya Bali, Advocate for
Ms.Kavita Jha, Advocate.

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Date of Decision: 24th August, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present Income Tax Appeal has been filed challenging the order dated 16th December, 2019 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 4156/Del./2017 for the Assessment Year 2012-13.
2. Learned Counsel for the Appellant states that the ITAT has erred in deleting the disallowance of interest expenditure of Rs.4,32,72,702/- under Section 36(l)(iii) of the Income Tax Act, 1961 ('the Act'), particularly when there was clear cut finding that the borrowed funds were not utilized for the purposes of the business of Assessee but diverted to Group Companies without charging any interest thereon.



3. He also states that the ITAT has erred in deleting the addition of Rs.37,40,940/- made under Section 14A read with Rule 8D of the Income Tax Rules, 1962 ignoring the fact that the Assessee admitted having incurred expenses for earning exempt income.

4. The CIT(A) on the issue of disallowance of interest expenditure of Rs.4,32,72,702/- made under Section 36(1)(iii) of the Act observed that the loans and advances included the – investment in the immovable property and was part of the business activity, investment in the partnership firm was made wholly and exclusively for the purpose of the business, the advances recoverable and forward cover receivable included in the advances were business advances and the same were given to the suppliers with whom regular business transactions had been carried out, the advance to the DLF Ltd. given for the purpose of business and the other advances on which interest had been charged by the Assessee had been shown in the Schedule 17 forming part of the financial accounts. CIT (A) further noted that the loans and advances had been given on account of the "Commercial Expediency" and no notional interest could be charged on such advances given for the purposes of business. The ITAT endorsed the said finding in the impugned order. The relevant portion of the ITAT order on this aspect is reproduced hereinbelow:-

11. The assessee is in the business of real estate, entertainment & power generation and the loans & advances include investments in the property business of the assessee. Hence, it can be said that the advances recoverable included the advances which are business advances on which no interest is disallowable. It was also part of the record that another advances interest has been charged by the assessee as found out by the Id. CIT (A) on going through the Schedule 17 of the balance sheet. Since, the loans &



advances have been given on account of commercial expediency and notional interest can be charged on such advances or interest can be disallowed u/s 36(1)(iii). In the case of Taparia Tools Vs JCIT CA No. 6366 of 2003, the Hon'ble Apex Court observed that while examining the allowability of deduction, the Assessing Officer is to consider the genuineness of the business borrowings and that the borrowings was further purpose of business and genuine. Once, the genuineness is proved and interest is paid on the borrowings, no interest can be disallowed on the grounds that the assessee has not correctly used the amounts borrowed. Further, the Hon'ble Apex Court in the case of SA Builders held that in case of interest bearing loans taken and interest free advances given, what is to be looked into is the measure of "commerdal expediency" and "for the purpose of the business". Hence keeping in view the facts of the case and legal propositions laid down on this aspect of allowability of interest u/s 36(1)(iii), we hereby decline to interefere with the order of the ld. CIT (A). The appeal of the revenue on this ground is dismissed.”

5. On the issue of addition of Rs.37,40,940/- made under Section 14A read with Rule 8D, the ITAT observed that the Appellant had own funds of Rs.39,796.21/- lakhs which were far more than the investments of Rs.729.98 lakhs and the plain reading of Sections 14A(2) and 14A(3) showed that when the Assessee offered disallowance under Section 14A of the Act, the provisions of Section 14A(2) read with Rule 8D could not be invoked unless the Assessing Officer was dissatisfied about the correctness of disallowance so offered.

6. Both the appellate authorities below, relying on the decision of this Court in **Maxopp Investment Ltd. v. Commissioner of Income-Tax, New Delhi [2011] 15 Taxmann.com 390 (Delhi)** affirmed by Supreme Court in **Maxopp Investment Ltd. v. Commissioner of Income-tax [2018] 91 taxmann.com 154 (SC)** deleted the addition made by the Assessing



Officer under Section 14A of the Act observing that the Assessee had made a *suo moto* disallowance of Rs.6,76,757/-.

7. Keeping in view the aforesaid concurrent findings of CIT(A) and ITAT, this Court is of the view that no substantial question of law arises for consideration in the present appeal. Accordingly, the same is dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 24, 2022
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