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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, Ms. Easha
& Ms. Hemlata Rawat, Advs.

versus

THE COOPERATIVE STORES LTD. Respondent
Through: None

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR
KAURAV

ORDER
20.03.2024

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CM APPL. 17184/2024 (6 Days Delay in filing), 17185/2024 (76 Days Delay in Refiling)

1. Bearing in mind the disclosures made, the applications are allowed and the delay of 6 days in filing and 76 days in re-filing the appeal is condoned.
2. Applications stand disposed of.

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3. Notice. Although the respondent is stated to have been placed on advance notice, none has appeared on its behalf when the matter was called. Consequently, let learned counsel for the appellant take steps for service through all permissible modes including via approved courier service.
4. The Principal Commissioner of Income Tax-12 has impugned the order dated 14 June 2023 passed by the Income Tax appellate Tribunal ["ITAT"] and has proposed the following questions of law



for our consideration:

“A. Whether on the facts and in the circumstances of the case, the Ld. ITAT has erred in law in deleting the additions to the tune of Rs.57,38,02,128/- made by the Assessing Officer under Section 37 of the Act?

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 Government of Rs.68,51,00,000/- held by the Assessing Officer as value of benefit arising from business under Section 28(iv) of the Act?”

5. The facts surrounding the assessment undertaken for the Multi-State Co-operative Society [**“Co-operative Society”**] / the respondent assessee herein stands succinctly noticed in paragraph 2 of the judgment which is reproduced hereinbelow:

“2. The facts in brief are the assessee is a Co-operative Store Limited, popularly known as the Super Bazar, Delhi and was originally registered in 1966 under the Bombay Coop. Societies Act (1925) as applicable in Delhi and with the enactment of the Delhi Coop. Societies Act, 1972, the Super Bazar functioned under the Act till 22-01-1966. In order to extend the business activities of the Store and protect the interest of consumers, the Management of Super Bazar had decided to function as Multi State Cooperative Society and finally registered under the Multi-State Cooperative Societies (MSCS) Act, 1984 (amended in the year 2002) with its area of operation being the entire country since 22nd January, 1966. The Union of India (through Ministry of Consumer Affairs) was holding equity of 72.00% in the Store. On account of the co-operative society running into huge losses running into hundreds of crores of rupees, the same was ordered to be liquidated vide an order dated 05-07-2002 passed by the Central Registrar acting under the Multi- State Cooperative Societies Act, 2002. On a petition filed before the Hon'ble Supreme Court by the employees union, the Hon'ble Supreme Court passed various orders for revival of the Cooperative society and inter alia directed:

In terms of our order dated 7th May, 2008, an amount of Rs. 54.31 crore being arrears of wages upto 31st December, 2007, was directed to be disbursed by the highest bidder Rs. 55 crores stands deposited by highest bidder. The sum of Rs. 20 crore out of Rs. 55 crore which lies with the Registry of the Supreme Court, will be



disbursed by the Official Liquidator and the nominee of the Central Registrar Co-operative Societies in the presence of one Union representative of each Union within four weeks from today. The representative of the highest bidder will also remain present in the said meeting. It is made clear that the workers will sign the receipt of payment, which will be adjusted towards the arrears of Rs. 54.31 crores.

2.1 This apart, the Hon'ble Supreme Court directed that the balance amount should be paid by the highest bidder within a period of 8 weeks covering arrears of Rs. 54.31 crores."

6. The ITAT has taken into consideration the steps which were taken by the Supreme Court for the revival of the cooperative society and has consequently proceeded to come to the following conclusions:

"8.1 On the other hand relying judgment of Hon'ble Supreme Court dated 07.05.2008 and 13.08.2010, Ld. AR submitted that the quantum of amount payable to workers on account of wages/ salaries/ PF etc. and sums payable to other authorities was not a liability of the assessee till it was determined by Hon'ble Supreme Court. This aspect has been rightly relied by Ld. CIT(A) to benefit the assessee."

7. On an overall consideration of the background surrounding the steps which were taken for revival of the cooperative society concerned, we are of the considered opinion that in the facts and circumstances of the case there would exist no justification to interfere with the ultimate conclusions rendered by the ITAT.

8. That only leaves us to examine the issue pertaining to the waiver of the loans which were extended by the Union Government to the respondent assessee. Undisputedly, those loans were not used for the acquisition of a capital asset. It is in the aforesaid context that Mr. Kumar, learned counsel for the appellant, contends that the provisions of Section 41 of the Income Tax Act, 1961 ["Act"] would apply. The appeal would merit further consideration on the said question.



9. For reasons aforementioned, we admit the appeal on the following question of law:

1. Whether on the facts and in the circumstances of the case, the 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?

10. Let the appeal be called again on 10.07.2024.

YASHWANT VARMA, J

PURUSHAINDRA KUMAR KAURAV, J

MARCH 20, 2024/kk