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

+ ITA 332/2024

ASHOK J THAPAR HUF

.....Appellant

Through: Dr. Rakesh Gupta, Mr. Somil
Agarwal & Mr. Dushyant
Agrawal, Advs.

versus

DEPUTY COMMISSIONER OF INCOME

TAXCIRCLE 61(1) NEW DELHI

.....Respondent

Through: Mr. Vipul Agarwal, SSC.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

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09.07.2024

CM APPL. 37944/2024 (Ex.)

1. Allowed subject to all just exceptions.
2. Application stands disposed of.

CM APPL. 37945/2024 (56 Days Delay in Refiling)

3. Bearing in mind the disclosures made, the delay of 56 days in re-filing the appeal is condoned.
4. Application stands disposed of.

ITA 332/2024 & CM APPL. 37943/2024 (Interim Relief)

5. The appellant/ assessee assails the order of the Income Tax Appellate Tribunal [“**Tribunal**”] dated 30 November 2023 and poses the following questions of law for our consideration:

“a. That whether the findings recorded order passed by the Tribunal are perverse?

b. Whether Tribunal has erred in law in holding that principle of consistency is not applicable?



- c. Whether Tribunal has erred in holding that business of money lending was an afterthought merely on the ground that no interest income has been earned in this year?
- d. Whether Tribunal has erred in not allowing the business expenses relating to business of money lending merely on the ground that no interest income has been earned in this year?
- e. Whether the Tribunal has erred in passing the impugned order in violation of principles of natural justice?"

6. We note that the solitary issue which arose for examination was of the asserted engagement of the assessee in the business of money lending. While dealing with the aforesaid the Tribunal in paras 13.2 to 13.5 has held as follows:

“**13.2** However, what is material is the fact that in that year the assessee was found to be earning interest income and that justified the claim of being into money lending business. In AY 2013-14, the Id. CIT(A) has accepted the claim of the assessee only on the finding that in earlier years the Department had accepted the assessee’s claim of doing business of money lending. In AY 2014-15, the Id. CIT(A)-11, New Delhi, has restricted the disallowance to 5% rather than 15% as made by the AO on the basis of possibility of personal usage. The order of the Id. CIT(A) shows that in that year the assessee had shown himself to be engaged in the business of leasing of properties only and there was no adjudication on the question of money lending business. In AY 2016-17, the Id. CIT(A)-20, New Delhi, relied on the Tribunal decision for 2011-12 to hold that the assessee was doing money lending business which was dormant and that there are some existence which are necessary for the maintenance of establishment to keep the litigation alive and, therefore, deleted the disallowance of expenditure. In AY 2012-13, the Id. CIT(A)-20, New Delhi, while dealing with the disallowance of expenses of Rs. 2,87,80,430/- by the AO, the issue was appreciated in the light of the fact that the money lending business was accepted in AY 2005-06, 2006-07, 2007-08 and 2008-09 where income of interest was shown as business income and, thus, the Id. CIT(A) in AY 2012-13 has interfered into the issue holding that the interest income from money lending of Rs. 1,15,60,000/- should have been taken as business income and, accordingly, allowed the expenditure.

13.3 Now, coming to the present assessment year, at the outset, we would like to reiterate the settled proposition of law that every assessment year is independent and there is no applicability of principles of res judicata, if the facts are distinguishable and there



is evidence in that regard. In the present year 2015-16, the assessee is no more into subletting business, but, has earned income from property and has also claimed deduction u/s 249a) of the Act which we have allowed in ground no.2. During the year, the assessee has changed the receipts from LIC India from one received in the capacity as a lessee who has created the sublease to an owner who has rented the premises. Thus certainly the expenses of the description mentioned in the assessment order could not be attributed to the income from property as standard deduction u/s 24(a) of the Act stands allowed.

13.4 It appears that during assessment proceedings the assessee claimed that apart from leasing of property business the assessee is also engaged in money lending business. This was considered by the AO to be an afterthought, but, the Id. CIT(A) has gone into the issue in a more detailed manner making the following relevant observations in para 6.1.6 to 6.1.8 as follows:

6.1.6 The Assessing Officer in the assessment order gave a finding that the appellant has shown receipts from subletting of property and claimed the business expenditure of Rs. 43,62,446/- on the same. During assessment proceedings at a very later stage the appellant in reply to the show cause letter of the Assessing Officer submitted that is also engaged in money lending business besides being engaged in leasing of property business. The expenses claimed were incurred wholly and exclusively for business purposes and therefore deserves to be allowed. The Assessing Officer did not have any reasons to rely on the last submission of the appellant because the appellant had not shown any income from money lending business and high expenditures have been claimed under heads such as salary, repair and maintenance, vehicle running and maintenance and depreciation etc. totalling to Rs. 43,62,446/-. The Assessing Officer therefore disallowed the expenditure.

6.1.7 The appellant during appeal hearing submitted that it did not earn any interest on money lending in this year because the parties to whom loans were advanced have stopped paying interest and principal amount and the matter is under litigation. Expenses have been made on litigation to recover the same. But the money lending business has not seized to exist. The appellant further submitted that expenses were made to maintain office establishment and on legal and professional charges but however personal use of vehicle running and maintenance including interest on car loan and depreciation on car cannot be denied.

6.1.8. From verification of the balance sheet of the appellant it appears that there are two entries/ transactions which the



appellant has termed as money lending business i.e. advance against property (Birla Power) amounting to Rs. 3,87,50,000/- and advance to Suil Mantri Developer of Rs. 3,21,18,077/- which happened much earlier may be before 10 years and interest have ceased to come against those advances. It further appears that the advances were for purchase of properties. It is not known under what circumstances and for what reasons these amounts have been given as advance for property to the developer. What has transpired between the appellant and both the persons and how the advance for property changed its money lending. Why the amount of principal and interest have not been paid back to the appellant. To consider it as money lending business would be stretching it very far. As such no income has been shown from money lending business for quite some years in the past too. The income from money lending business if any as per the Hon'ble ITAT, Delhi should be income from other source. However, under these circumstances there is no case for allowing business expenditure of Rs. 43,62,446/- against nothing. The action of the Assessing Officer in disallowing the amount is confirmed.

13.5 Not it comes up that in the present assessment year there is no interest income at all either under the heads, 'Income from other sources' or 'business income'. The claim of the assessee is that the lending business should be accepted on the basis of consistency. However, the same cannot be accepted as Id. CIT(A) has made a very specific observation on the basis of the financials. There are only two entries which the assessee claims to be money lending business. Now, In regard to one of those the assessee has filed a copy of complaint u/s 138 of the Negotiable Instruments Act filed against Sunil Mantri Realty Ltd., which is available at page 12-16 of the paper book and the averments of this complaint shows that the assessee had entered into an agreement on 01.01.2010 to purchase certain flats from Sunil Mantri Realty Ltd., for which payments were made, but, as that vendor could not supply the flats, the vendor had given a cheque of Rs.4,10,00,000/- to the assessee to return the sale consideration and that cheque was dishonoured. Thus, the averments in the complaint do not at all indicate that the money claimed to have been standing as a loan was ever given as a loan for the purpose of money lending business. In fact, in AY 2012-13, there was an issue of undisclosed income of Rs. 12 lakhs wherein the AO had made an addition of Rs. 12 lakhs on the ground that the assessee had been showing interest income from M/s Sunil Mantri Realty Ltd. on actual basis. M/s Sunil Mantri Realty Ltd. had paid interest and deducted tax which was reflected in 26AS, but, there was lack of reconciliation. The order of Id. CIT(A) for AY 2012-13 at page 94 of the paper book vide para 5.3 show that there is a mention of cheque of Rs. 4,10,00,000/- given



by the debtor on 01.09.2023 which could not be encashed and for which the assessee has filed the case and the Id. CIT(A) had confirmed the addition of Rs. 12 lakhs. Thus, we are of the considered view that what Id. AR has relied in regard to the previous or subsequent years about the money lending business of the assessee is not sustainable in the facts discussed above from the perspective of Id. CIT(A) and we do not consider that there is any error in the sustenance by Id. CIT(A). Accordingly, this ground is decided against the assessee.”

7. In view of the aforesaid, we are of the considered opinion that the rule of consistency clearly did not have application in the facts of the case and the Tribunal did not err in returning the findings which are questioned before us.

8. Accordingly, and for all the aforesaid reasons, this appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 9, 2024/kk