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

% ***Decision delivered on: 02.11.2023***

\+ **ITA 946/2019**

PR. COMMISSIONER OF INCOME TAX- 2 ..... Appellant

Through: Mr Shailendra Singh, Sr. Standing Counsel with Ms Dacchita Shahi and Ms Anuja Pethia, Advs.

versus

M/S CLIX FINANCE INDIA PVT. LTD.
(FORMERLY KNOWN AS GE CAPITAL SERVICES INDIA LTD.) ..... Respondent

Through: Mr Sachit Jolly with Ms Disha Jham, Advs.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

1. On 23.08.2023, we had heard the matter at some length, and at that point in time, adverted to questions of law proposed by the appellant/revenue in the instant appeal.

2. For convenience, the relevant parts of the order dated 23.08.2023 are set forth hereafter:

> "*1. This appeal concerns Assessment Year (AY) 2010-11.*
>
> *2. Via this appeal, the appellant/revenue has assailed the order dated 14.05.2019 passed by Income Tax Appellate Tribunal [in short "Tribunal"].*
>
> *3. The appellant/revenue has proposed the following questions of law:*

> *"(i) Whether, on the facts and circumstances of the case, the ITAT was correct in law in restricting the addition on disallowance u/s 14A of the Income Tax Act read with Rule 8D of the Income Tax Rules, to Rs. 78,037/- as against the addition made by the AO of Rs. 7,94,53,077/-, by ignoring the fact that under Rule 8D the disallowance is not to be restricted to the extent of exempt income?*
>
> *(ii) Whether on the facts and circumstances of the case, the Hon'ble ITAT was correct in law in deleting the addition of Rs. 103,87,99,712/- corresponding to loss on sale of loans by not considering that the right to receive money is a capital right as the assessee is not in the business of trading of loan portfolio?"*

4. Insofar as the proposed question no.(i) was concerned, the Tribunal has noted that the Assessing Officer (AO) computed a disallowance amounting to Rs.7,94,78,896/- by applying Rule 8D of the Income Tax Rules [in short, "Rules"].

5. What also emerged from the record is that the respondent/assessee had, suo motu, made a disallowance of Rs. 25,819/- for earning tax free dividend income amounting to Rs. 78,037/-.

6. According to the Tribunal, the AO did not record its satisfaction as to the correctness or otherwise of the suo motu disallowance made by the respondent/assessee amounting to Rs. 25,819/-.

7. The Tribunal has also observed that there is no finding returned by the AO that the respondent/assessee has used interest bearing funds for making investment in shares.

8. In other words, the view taken by the Tribunal was that the appellant/revenue had failed to establish a nexus between borrowed funds and investment made in shares.

9. In our view, apart from the finding of facts returned by Tribunal as regards to [sic]the failure of the AO to arrive at a satisfaction as to whether the suo motu disallowance made by the petitioner was correct, the addition in issue, by way of deletion of disallowance could not have been made because the exempt income earned by the respondent/assessee was only Rs. 78,037/-.

10. This aspect is covered by the following judgments rendered by various Courts:

(a) ***Pr. Commissioner of Income Tax~6, New Delhi vs. Mcdonald's India Pvt. Ltd,*** *2018:DHC:6836-DB.*

(b) ***Cheminvest Ltd. vs. Commissioner of Income-tax IV*** *(2015) 378*

ITR33 (Delhi).

(c) ***Commissioner of Income-tax, Central-I, Chennai vs. Chettinad Logistics (P) Ltd. (2017) taxman 55 (Madras).***

11. We may note that a Special Leave Petition was filed, insofar as the decision rendered by the Madras High Court in Commissioner of Income-tax, Central-1, Chennai vs. Chettinad Logistics (P) Ltd. was concerned, which was dismissed on merits by the Supreme Court.

12. Therefore, in our view, the proposed question no.(i) does not arise for our consideration.

13. So far as second question of law is concerned, list the matter on 02.11.2023."

3. As would be evident from the aforesaid extract, the only issue which remains to be decided is referred to in paragraph 3(ii) of the extracted order.

4. The record shows that the second issue, which in substance, is a replication of proposed question 'B' in the appeal, does not emerge from the orders passed by the statutory authorities. The issue that was under consideration was whether the full sale value of the loan portfolio, crystallized in the assessment year in issue, was received, and not whether the amount received was in the nature of 'capital', as is sought to be projected via proposed question 'B'. Concededly, the loan portfolio was sold by the respondent/assessee, in favour of Shriram Transport Finance Company Limited [in short, "Shriram"].

5. If there was any doubt as to what was being considered, it attains clarity upon perusal of the following observations made by the Dispute Resolution Panel (DRP), in its directions dated 24.12.2014:

"***6.2*** *We have carefully considered the facts of the case and the synopsis/submission of the assessee.* ***On careful perusal of various articles of agreement of sale of the above referred debts we are of the view that the sale of debts has not fully materialized in the relevant year as it is the transition phase of sale of debts and that is why the assessee has been appointed as debt recover [sic…recovery] agent and the hypothecated assets against which the loan given by the assessee were in***

the process of transfer to STFCL. Further, such sales of approximately 24,000 debts take time to get transferred in totality*. Further, such sale of actionable claim is out of the purview of the Sales [sic…The Sale] of Goods Act. Due to indemnity and condition to recover the enhance [sic…enhanced] loss over and above 20% of debts from the assessee till claim made by STFCL.* ***We therefore, [sic…are] of the considered view that the sale of debts has not materialized in totality in the relevant year and therefore, the loss claimed on this account is held not crystallized in the relevant year and thus the question of its allowance in the relevant year does not arise at all.***"

[Emphasis is ours]

6. The Assessing Officer's (AO) observations, in the assessment order dated 30.01.2015,shed further light on this aspect of the matter. For convenience, the relevant observations made in this behalf are extracted hereafter:

"*From the main clauses as noted above [sic…,]* ***it is clear that the assessee company has not transferred the loan facilities in totality****. As in clause 5 above [sic…,] it has clearly been mentioned that simultaneous with the execution of this agreement [sic…,] GESCI and the buyer has also entered into an interim service agreement for collection and security agent [sic] of the buyer with respect to obligator receivables for a specific period of time. The assessee company did not furnished [sic…furnish] any separate agreement for services as mentioned in this agreement. The clause of agreement clearly establishes that even after selling receivables [sic…,] the assessee company continues to carry on the business activities with respect to these receivables as a collection agent of the buyer company. The assessee company also failed to furnish any details of explanation as to how much amount was charged for these services and as to how the same is appearing in the books of accounts.*"

[Emphasis is ours]

7. What gives further credence to this aspect is the finding of fact returned by the Tribunal, *albeit*, after a detailed analysis of the agreement executed between the respondent/assessee and Shriram, which is encapsulated in paragraph 38 of the impugned order:

"*38. After considering the facts in totality, in the light of the sale agreement and various relevant clauses discussed hereinabove, we are of the considered opinion* ***that transaction has taken place during the year under consideration and loss has crystallized during the year under consideration and the assessee is entitled for claim of loss of Rs. 103.87 crores in the year itself.*** *We, accordingly direct the Assessing Officer to delete the addition of Rs. 104.87 [sic…103.87] crores.*"

[Emphasis is ours]

8. However, for the sake of completeness, the Tribunal appears to have also adverted to its decision rendered in Assessment Year (AY) 2004-05, wherein, the issue that was framed and dealt with was whether the loss incurred by the respondent/assessee, in the said assessment year, was on capital or revenue account.

9. The Tribunal, in its order dated 14.05.2019, for the AY in issue i.e., 2010-11, has extensively extracted its decision in ITA No. 4206/DEL/2011 for the AY 2004-05, which had concluded that the assessee's right to receive money from its debtors, on account of financing of assets, accrued to the assessee in the ordinary course of business and was not in the nature of 'capital' receipt.

10. The record shows that for the AY in issue i.e., 2010-11, the respondent/assessee had entered into an agreement with Shriram for the sale of financial receivables, having an aggregate book value of Rs. 10,11,71,94,000/-, for a consideration amounting to Rs. 9,08,29,87,000/-. As noticed above, the loan portfolio was sold to Shriram.

11. The record shows that there is no dispute concerning the fact that the loan portfolios, concerning forty-five thousand (45,000) borrowers, had been sold to Shriram, and therefore, the difference between the figures [the difference between the value of the financial receivables and consideration

received from Shriram] was sought to be claimed by the respondent/assessee as 'loss' on revenue account.

12. In our view, the second issue i.e., proposed question no. "B" does not arise from the orders passed by the statutory authorities.

13. Insofar as to whether the liability had, in fact, crystallized in the period in issue, the Tribunal, after examining the assignment agreement executed between the respondent/assessee and Shriram, has returned a categorical finding of fact that the liability indeed arose in the period in issue, as indicated in paragraph 38 of the Tribunal's order extracted hereinabove.

14. The appellant/assessee has not proposed any question of law to the effect that this finding is perverse. Therefore, on this score as well, we are not inclined to entertain the appeal, and the appeal is, accordingly, closed.

15. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER
(JUDGE)

GIRISH KATHPALIA
(JUDGE)

NOVEMBER 02, 2023/RY

Click here to check corrigendum, if any