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

% ***Decision delivered on: 18.12.2023***

\+ **ITA 776/2023, CM APPL. 65391/2023 & 65392/2023**

VALLEY IRON AND STEEL CO. LTD. ..... Appellant

Through: Mr Abhimanyu Jhamba, Ms Thonpino Thangal, Ms Hatneimawi and Mr Shivam Parashar, Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL-1 ..... Respondent

Through: Mr Vipul Agarwal, Senior Standing Counsel.

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

**RAJIV SHAKDHER, J. (ORAL):**

**CM APPL. 65392/2023**

1. Allowed, subject to just exceptions.

**ITA 776/2023, CM APPL. 65391/2023 & 65393/2023**

2. The present appeal concerns Assessment Year (AY) 2018-19.

3. *Via* the instant appeal, the appellant/assessee seeks to assail the order dated 27.04.2023, passed by the Income Tax Appellate Tribunal [in short "Tribunal"].

4. The record shows that in the course of the assessment proceedings, it emerged that Rs.14,00,000/- had been credited to the account of the appellant/assessee. On enquiry, it was found that ostensibly, the said amount was received by the appellant/assessee as a loan from an entity named Gee

Wire Pvt. Ltd [in short "GWPL"].

5. In support of this plea, a loan agreement was produced. A perusal of the loan agreement shows that it was printed on the letterhead of the appellant/assessee.

5.1 Facially, the loan agreement is titled "unsecured term loan agreement". The said loan agreement is dated 01.07.2017. Significantly, the purpose of the loan appears to be the remission of liabilities against fixed assets/capital goods and not for the routine operational requirements of the appellant/assessee. It appears that this purpose has been incorporated with a strategic plan in mind, which is, if the loan is not to be repaid for any eventuality, i.e., if there is remission of liability, it would then not be treated, in law, as a taxable amount as facially the remission of liability would be on capital and not on revenue account. That apart, the term included in the loan agreement for interest and repayment of debt is also out of the ordinary. As per the terms of the loan agreement, the appellant/assessee was not obliged to pay any interest to the aforementioned lender i.e., GWPL. Furthermore, the appellant/assessee could pay the loan amount after four years in three annual installments, as per "mutual consent".

6. The Assessing Officer (AO) doubted the genuineness of the loan transaction and hence added the amount to the income of the appellant/assessee by taking recourse to Section 68 of the Income Tax Act,1961 [in short, "Act"].

6.1 The view taken by the AO has been confirmed by the Commissioner of Income Tax Appeals [in short "CIT(A)"] *via* his order dated 04.08.2022. Likewise, the Tribunal had sustained the addition *via* the impugned order.

7. Mr Abhimanyu Jhamba, learned counsel, who appears on behalf of

the appellant/assessee, says that "the triple test" enunciated by the courts for discharging the onus stood satisfied. According to Mr Jhamba, the identity, creditworthiness, and genuineness of the transaction were established.

7.1 In support of this plea, Mr Jhamba says that the appellant/assessee could not go beyond production of the aforementioned loan agreement, as the name of the lender i.e., GWPL, was struck off from the Register of Companies in and about August, 2018.

7.2 It is also the submission of Mr Jhamba that it was well within the powers of the AO to issue requisite notices and collect necessary information with regard to the lender, i.e., GWPL.

8. It is, thus, the submission of Mr Jhamba that since there was remission of liability, the provisions of Section 41(1) of the Act came into play, which is an aspect that was not fully appreciated by the statutory authorities.

9. Mr Vipul Agarwal, learned senior standing counsel, who appears on behalf of the respondent/revenue, submits that no interference was called for with the impugned order. It was contended by Mr Agarwal that the appellant/assessee had failed to discharge its onus as regards the genuineness and creditworthiness of the lender i.e., GWPL.

10. We have heard learned counsel for the parties.

11. According to us, the loan agreement entered into by the appellant/assessee with the lender i.e., GWPL, raises more questions than answers as to what was the reality. Strangely, this agreement did not impose any burden on the appellant assessee i.e., the borrower, with regard to interest. The loan, apparently, could be repaid after four years in three annual installments, *albeit* on mutually agreed terms.

12. Since the lender was a private limited company, it was perhaps open to the appellant/assessee i.e., the borrower, to produce the erstwhile directors to establish the genuineness of the loan agreement.

13. None of these steps were taken by the appellant/assessee.

14. The counsel for the appellant/assessee, on the other hand, tried to shift the onus onto the respondent/revenue.

14.1 The submission that the AO should have issued notices to the lender i.e., GWPL does not impress us. The reason being that if the appellant/assessee was unable to produce the requisite material since the lender i.e., GWPL had been struck off from the Register of Companies, it would have been equally futile if notices had been issued by the AO.

15. In any event, in our opinion, the initial onus was not discharged by the appellant/assessee. Besides this, the argument advanced that since there was remission of liability Section 41(1) of the Act would apply and not the provisions of Section 68 of the Act, as rightly held by the Tribunal, is an untenable submission.

15.1 Since the genuineness of the loan transaction was doubted, no liability, in law, fructified requiring remission.

16. Given the foregoing discussion, we are not inclined to interfere with the impugned order.

17. The appeal and the pending applications are, accordingly, closed.

**RAJIV SHAKDHER, J.**

**GIRISH KATHPALIA, J.**

**DECEMBER 18, 2023/*MS***