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

% *Decision delivered on: 22.09.2023*

+ **ITA 547/2023 & CM APPL. 49341/2023**

PR. COMMISSIONER OF INCOME TAX-12 Appellant

Through: Mr Sanjay Kumar, Sr Standing
Counsel with Ms Easha and Ms
Hemlata Rawat, Adv.

versus

AVDESH MISHRA Respondent

Through: Mr Kapil Goel, Adv.

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. This appeal concerns Assessment Year (AY) 2016-17.
2. *Via* the instant appeal, the appellant/revenue seeks to assail the order dated 08.12.2022 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].
3. The record shows that the Assessing Officer (AO), *via* the assessment order dated 22.12.2018, had made additions on account of an unsecured loan obtained by the respondent/assessee from a trust going by the name Dayal Trust. The addition on account of the unsecured loan made was to the extent of Rs.2,91,00,849/-.
4. Besides this, an addition was also made for the interest paid by the respondent/assessee to Dayal Trust. The amount added on this score was



Rs.35,71,306/-. Therefore, the total addition made by the AO was Rs.3,26,72,155/-. This addition was made under Section 68 read with Section 115BBE of the Income Tax Act, 1961 [in short, “Act”].

5. Being aggrieved by the addition made by the AO, the respondent/assessee preferred an appeal with the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”].

6. The CIT(A), *via* order dated 28.02.2020, deleted the addition after calling for a remand report from the AO regarding additional evidence placed by the respondent/assessee.

6.1. In an appeal preferred against the CIT(A)’s order by the appellant/revenue, the Tribunal dismissed the appeal and sustained the said order.

7. The record discloses that one of the errors that the AO had committed was his failure to notice that the interest paid by the respondent/assessee to Dayal Trust was bifurcated amongst the beneficiaries of the trust, which was thereafter taxed in their hands.

7.1 This aspect has been duly appreciated and noted by the CIT(A).

8. Furthermore, the record shows that the respondent/assessee had furnished details of payments made by lender trust (Dayal Trust) to the builder, Emaar MGF Land Ltd., for the acquisition of the subject property-containing cheque numbers, dates, amounts of each installment of loan released, bank details, interest charged (rate and amount); along with confirmation from the lender trust, copy of Income Tax return, balance sheet and details of the taxable income of trust.

9. To be noted, the respondent/assessee had taken a loan from Dayal Trust for the acquisition of the subject property from Emaar MGF Land Ltd.



10. The Tribunal has adverted to the evidence placed on record which is the subject matter of the remand report of the AO dated 10.02.2020 in paragraph 10 of the impugned order.
11. According to us, the addition made by the AO was not called for in the instant case. The respondent/assessee had been able to place the relevant material to back his explanation that the entry in its books of accounts was nothing but a loan extended by Dayal Trust.
12. Thus, for the foregoing reasons, we are of the view that no substantial question of law arises for our consideration.
13. The appeal is, accordingly, closed.
14. Consequently, the pending application shall stand closed.
15. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

SEPTEMBER 22, 2023

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