



\$~6

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

% *Date of Decision: 02.05.2025*

+ **ITA 324/2024**

HARSHA ASSOCIATES PRIVATE LIMITEDAppellant
Through: Mr Sandeep Sapra, Advocate.

Versus

DEPUTY COMMISSIONER OF INCOME TAXRespondent
Through: Mr Anurag Ojha, senior standing
counsel with Mr V.K. Saksena, Ms
Hemlata Rawat, Mr Dipak Raj Singh
and Mr Abhay Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

VIBHU BAKHRU, J.(Oral)

1. The appellant [Assessee] has filed the present appeal under Section 260A of the Income Tax Act, 1961 [the Act] impugning an order dated 21.06.2022 [the impugned order] passed by the Income Tax Appellate Tribunal [ITAT] in ITA No.3536/Del/2016 in respect of assessment year [AY] 2007-08.

2. The impugned order is a common order passed by the learned ITAT in ITA No.3297/Del/2016 and ITA No.3536/Del/2016. These were cross appeals arising from an order dated 18.03.2016 passed by the Commissioner of Income Tax (Appeals)-XVI, New Delhi [CITA]. Whereas ITA No.3297/Del/2016 was preferred by the Assessee, ITA No.3536/Del/2016 was preferred by the Revenue. It is material to note that the present appeal is confined to the impugned order relating to ITA No.3536/Del/2016, which



arises from the Revenue's appeal against an order dated 18.03.2016 passed by the CIT(A).

3. The appeal before the learned ITAT emanated from the assessment order dated 31.12.2009 passed by the Assessing Officer [AO] under Section 143(3) of the Act.

4. The Assessee had filed its return of income for AY 2007-08 declaring an income of ₹28,71,047/-. The said return was picked up for scrutiny. On examination of the accounts, the AO found that the Assessee had reflected the liabilities owed to Bank of Baroda, Indian Overseas Bank and Punjab National Bank aggregating ₹4,45,99,625/- as under:

| | |
|----------------------|--------------------------|
| “Bank of Baroda | Rs.67,43,549/- |
| Indian Overseas Bank | Rs.6,76,707/- |
| Punjab National Bank | <u>Rs.3,71,79,369/-</u> |
| Total | <u>Rs.4,45,99,625/-”</u> |

5. However, the aforesaid liabilities as reflected by the Assessee in its books, were not supported by any statement furnished by the concerned banks. Accordingly, the AO issued a notice under Section 133(6) to the said banks (Punjab National Bank, Indian Overseas Bank and Bank of Baroda) seeking confirmation of the liabilities as reflected by the Assessee in its accounts. An Inspector was also authorised to procure the information from the banks, which was received on 24.12.2009. None of the aforesaid banks confirmed the liabilities as reflected by the Assessee in its books of accounts. However, Indian Overseas Bank confirmed that the Assessee owed a sum of ₹1,86,636/- as on 31.03.2007. In the aforesaid circumstances, the AO concluded that the Assessee had reflected bogus credits in its accounts and



accordingly, made an addition of ₹4,44,12,989/- (₹4,45,99,625/- less ₹1,86,636/-) to the declared income of the Assessee.

6. Additionally, the AO also made further additions of ₹19,60,075/- in respect of difference between the opening and closing balance of the unsecured loans; ₹13,46,800/- on account of cessation of liability; ₹1,40,00,000/- on account of the unexplained deposit from one Sh. Ashok Kumar Verma; ₹29,28,497/- on account of disallowance of interest on account of interest free funds advanced to a related company, Harsha Buildcom Pvt. Ltd.; ₹32,80,669/- on account of unexplained advances received from customer; ₹3,80,156/ on account of disallowance under Section 40A(3) of the Act.

7. The Assessee appealed the assessment order before the CIT(A).

8. During the appellate proceedings, the Assessee produced further evidence, which was admitted by the CIT(A). On the basis of the said evidence, the CIT(A) deleted the additions made on account of unexplained liability amounting to ₹4,71,52,013/-. The CIT(A) also accepted the Assessee's challenge to the cessation of liability amounting to ₹13,46,880/-; difference in the unsecured loans amounting to ₹19,60,075/-; disallowance on account of notional interest of ₹29,28,497/-; the addition made on unexplained advances except to the extent of ₹4,89,744/-; and disallowance of ₹3,80,156/- under Section 40A(3) of the Act. However, the CIT(A) confirmed the additions on account of unexplained deposit of ₹1,40,00,000/- and a sum of ₹4,89,744/- of unexplained advances.

9. As noted above, both the Assessee and the Revenue appealed the order of the CIT(A). The Revenue appealed the CIT(A)'s decision on three



grounds. First, that the deletion of the amount of ₹4,44,12,989/-, which was added by the AO on account of liabilities reflected as payable towards banks. Second, the deletion of the addition of ₹2,46,880/- on account of cessation of liability; and third, deletion of an addition of ₹12,92,241/- on account of advance received from Sh. Jagdish Kumar and Sh. Avinash Kumar. According to the Revenue, the identity, genuineness and creditworthiness of the two persons was not established.

10. The learned ITAT did not sustain the Revenue's appeal in respect of deletion of the addition made on account of cessation of liability of ₹2,46,880/- and the deletion of addition of ₹12,92,241/- received from Sh. Jagdish Kumar and Sh. Avinash Kumar (Ground Nos.2 and 3). However, in respect of the challenge to the deletion of an addition of ₹4,44,12,989/-, the learned ITAT partly allowed the Revenue's appeal, and sustained the challenge to the extent of deletion of ₹4,39,22,918/-.

11. The learned ITAT found that the Assessee had failed to establish the liability of ₹67,43,549/- reflected as payable to Bank of Baroda and ₹3,71,79,369/- reflected as payable to the Punjab National Bank.

12. In the aforesaid context, the Assessee has projected the following questions for consideration of this court:

“I. Whether the finding of ITAT that reversal of addition of Rs.4,39,22,918 on account of liability by CIT (A) was based on mechanical acceptance of the explanation offered by the Appellant without independent enquiry, is perverse, in as much as, the CIT(A) deleted the addition by giving a factual finding after examination of the evidence on record which has not been controverted?”



- II. Whether the finding of ITAT that the CIT(A) has failed to determine the bonafides of the liabilities and has hurriedly relied upon the narrative canvassed on behalf of the Assessee without waiting for any verification report of the AO, is absolutely perverse in view of the uncontroverted finding of the CIT(A) that despite several reminders the AO did not submit his report; and also as per the provisions contained in Rule 46A (3) of the IT Rules which only requires grant of reasonable opportunity by CIT(A) to the AO; and furthermore no grievance to that effect was raised in appeal by the Revenue before the ITAT ?
- III. Whether the addition of Rs.4,39,22,918 made by the AO as confirmed by the ITAT, in absence of invocation of any provision under the Income Tax Act thereby non-grant of opportunity to the appellant, is perverse being violative of the principles of natural justice read with Article 14 of the Constitution?
- IV. Whether the confirmation/restoration of the order of AO by ITAT with regard to addition of Rs.4,39,22,918 on account of liability, is directly against the law laid down by the High Court of Delhi in the case of “CIT vs. Ritu Anurag Aggarwal” [ITA No. 325/2008 dated 22/07/2009] wherein it has been held that the question of addition on account of sundry creditors u/s 68 of I.T. Act does not arise once the purchases and the trading results have been accepted by the AO?
- V. Whether the confirmation/restoration of the order of AO by ITAT with regard to addition of Rs.4,39,22,918 on account of liability, is directly against the law laid down by the High Court of Calcutta in the case of “Pr. CIT Vs. Abhijeet Enterprise Ltd.” [ITAT 187/2023 dated 17.11.2023 as corrected by order dated 20.12.2023] where there is merely a notional entry and there is no actual receipt of sum of money by the Appellant, question of inclusion of the amount of notional entry as unexplained cash credit cannot arise under Section 68 of



the IT Act?”

13. The controversy, essentially, relates to the addition of the amounts reflected as payable to Bank of Baroda (₹67,43,549/-) and Punjab National Bank (₹3,71,79,369/-). The said amounts were reflected as payable as on 31.03.2007 to the aforesaid banks. It is material to note that the bank accounts did not reflect the said outstanding. However, the said accounts were not overdrawn to the aforesaid extent. Admittedly, the amounts reflected as payable to the said banks were not payable to the said banks.

14. The learned counsel for the Assessee earnestly contended before this Court that the liabilities were reflected in its books of account as “book overdraft” and not “bank overdraft”. He submitted that the debts reflected were book debts and not overdrafts from banks. The Assessee explained the outstanding liability in its books of accounts had arisen on account of cheques issued to various suppliers that were not presented to the concerned banks as on 31.03.2007. Thus, whilst the books reflected debt owed to the banks, the bank statement did not reflect an overdraft to the said extent.

15. The AO concluded that the outstanding balance, as reflected, was not genuine and, accordingly, added the same to the returned income of the Assessee. However, the CIT(A) accepted the Assessee’s contention and deleted the said addition. The CIT(A) had accepted the Assessee’s contention that even if the cheques were not presented, the same would continue to be a liability.

16. As is apparent from the above, the question whether the debts reflected as payable to the banks are genuine or fictitious is a pure question of fact.



17. In the present case, it is conceded that the books of account reflected inflated outstanding in excess of the statement of accounts furnished by the Bank of Baroda and Punjab National Bank. The cheques claimed to have been issued by the Assessee, on account of which the Assessee's books reflected a higher outstanding, were not presented in FY 2007-08 as well. Thus, in fact, these cheques were never presented to the concerned banks.

18. The account maintained with Punjab National Bank was an escrow account (and not an overdraft account) and could be utilised only for specified purposes. Therefore, the balance in the said account could not be in negative and the liability reflected in the books simply did not exist.

19. The Assessee claimed that it is involved in real estate, was obliged to deposit a part of the consideration received from its customers in the escrow account for being used for specified purposes for development of the projects.

20. The Assessee claimed that the cheques were issued for the purchase of materials from various vendors. However, due to the downturn in the real estate market, its customers failed to make payments, and the Assessee could not deposit the required funds into the Punjab National Bank's escrow account. Consequently, the Assessee returned the materials purchased in FY 2007-08 and recovered cheques issued to various suppliers. Thus, in any event, the banks could not be reflected as creditors, as they had not extended the advance as reflected by the Assessee in its books. If the Assessee's claim is accepted, the unpaid vendors had to be reflected as sundry creditors. However, the learned ITAT did not accept the Assessee's contention, primarily due to a lack of sufficient evidence, and there was no material on record to show that the Assessee had, in fact, received the goods, which were



subsequently returned.

21. The impugned order also does not reflect that any documentary evidence was produced by the Assessee to establish the said transactions as claimed.

22. As noted above, the question whether the transactions, as claimed by the Assessee, existed and were genuine are questions of fact. We are unable to find that the decision of the learned ITAT suffers from any perversity or patent illegality.

23. In our view, no substantial question of law arises for consideration of this Court.

24. The appeal is, accordingly, dismissed.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 02, 2025

RK

[Click here to check corrigendum, if any](#)