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

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\+ **ITA 735/2014**

CIT-V ..... Appellant

Through: Mr N.P. Sahni, Sr. Standing Counsel with Mr Nitin Gulati, Jr. Standing Counsel.

versus

M/S PASUPATI SPINNING WEAVING MILLS LTD ..... Respondent

Through: Mr Salil Kapoor, Mr Sanat Kapoor and Mr Arun Vir Singh, Advocates.

CORAM:
HON'BLE DR. JUSTICE S.MURALIDHAR
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% 11.08.2015

1. The Revenue has preferred the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter 'the Act') impugning an order dated 28th March, 2014 passed by the Income Tax Appellate Tribunal (hereafter 'the Tribunal') in ITA No. 225/Del/2011 for the Assessment Year 2007-08 whereby the Assessee's appeal against an order dated 2nd November, 2010 passed by the Commissioner of Income Tax (Appeals) [hereafter 'CIT(A)'] was allowed.

2. The principal controversy involves the taxability of a sum of ₹1,26,49,144/-, being the amount waived by Mutual Funds/Financial Institutions/Debenture Holders as a concession for the financial restructuring of the Assessee.

3. The Assessee had filed a return of income for the Assessment Year 2007-08 declaring NIL income after adjustment of brought forward losses of ₹7,52,60,093/-. The return filed by the Assessee was taken up for scrutiny and the Assessing Officer (hereafter 'AO') passed the assessment order dated 23rd October, 2009 under Section 143(3) of the Act making certain disallowances with respect to prior period expenses.

4. During the relevant period, Mutual Funds/Financial Institutions/ Debenture Holders had waived certain amounts due from the Assessee as a part of the financial restructuring scheme pertaining to the Assessee. The amount waived included interest as well as the principal amount. The said amount was included as a revenue receipt and the assessment was made accordingly. The assessment order dated 23rd October, 2009 was challenged before CIT(A), *inter alia,* on the ground that a sum of ₹1,26,49,144/- which represented the principal waived by the Mutual Funds/Financial

Institutions/Debenture Holders was not a revenue receipt but in the nature of a capital receipt and, thus, was not taxable. The CIT(A) held that the waiver of the liabilities by the Mutual Funds/Financial Institutions/Debenture Holders was credited in the Profit and Loss Account of the Assessee and was related to the Assessee's business and, therefore, was taxable under the Act. The CIT(A) further observed that the Assessee had not made a claim in respect of the aforesaid amount in its return of income nor had filed a revised return.

5. The Assessee successfully appealed against the order passed by the CIT(A) before the Tribunal. The Tribunal allowed the claim of the Assessee and further held that in cases where no further investigation into facts was necessary, the Assessee was entitled to make a fresh claim before CIT(A).

6. The learned counsel appearing on behalf of the Revenue contended that as the Assessee had not made a claim before the AO in respect of the sum of ₹1,26,49,144/-, the assessment made by the AO could not be impugned before the CIT(A). The learned counsel appearing for the Assessee disputed the aforesaid contention and drew the attention of this Court to an office note issued by the AO, which indicated that the Assessee

had, in fact, made claim for the waiver of the said principal amount to be treated as a capital receipt.

7. During the relevant period, the Assessee had written back a sum of ₹16.85 crores on account of extraordinary items in its Profit and Loss Account. The aforesaid amount represented interest as well as the principal waived by the Mutual Funds/Financial Institutions/Debenture Holders in terms of a restructuring scheme pertaining to the Assessee. Insofar as the element of interest is concerned, there is no dispute that the same would be taxable by virtue of the provisions of Section 41(1) of the Act. However, the sum of ₹1,26,49,144/- represented cessation of principal liability, which according to the Assessee was of a capital nature and consequently not taxable.

8. The office note referred to by the learned counsel for the Assessee clearly indicates that the Assessee had claimed the said amount as a capital receipt and had categorically submitted that the same had been inadvertently included in the computation of a taxable income by oversight.

9. In the circumstances, we are not inclined to accept the Revenue's contention that the said claim had been made for the first time before

CIT(A).

10. Indisputably, the amount of principal waived by the financial institutions cannot be taxed under Section 41(1) of the Act as the same had not been debited to the Profit and Loss Account in the earlier years nor had been claimed as a deduction from taxable income. The Tribunal had, accordingly, allowed the claim of the Assessee.

11. The Tribunal had further noted that the CIT(A) had considered the Appellant's claim on merits and that action had not been challenged by the Revenue. The Tribunal held that under the circumstances, the Revenue's contention could not be upheld. The learned counsel for the Revenue stated that since the order of the CIT(A) was in its favour, there was no question of the Revenue filing an appeal and the observation made by the Tribunal in this regard was *ex facie* erroneous.

12. In our view, the observation made by the Tribunal was with respect to the Revenue's contention that the Assessee's claim could not be considered on merits. It is, in this context, that the Tribunal observed that CIT(A)'s action of examining the Assessee's claim on merits had not been challenged. The said observations do not relate to the decision of CIT(A) on the merits

of the Assessee's claim.

13. In the aforesaid circumstances, we are not inclined to entertain the present appeal.

14. It is clarified that the question as to whether the AO could entertain a claim during the course of assessment proceedings is left open.

15. The appeal is, accordingly, dismissed. No order as to costs.

S.MURALIDHAR, J

VIBHU BAKHRU, J

AUGUST 11, 2015
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