

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, AM, &
Ms. KAVITHA RAJAGOPAL, JM**

आयकरअपीलसं./ I.T.A. No. 6543/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2011-12)

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| DCIT Cr. 6(1)(2), R. No. 506, 5 th floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020 | बनाम/ Vs. | M/s Blue Foods Pvt. Ltd. Plot No. 8, Marol Co-op. Industrial Estate, Near Marol Bhavan, Marol, Andheri-East, Maharashtra-400 059 |
| स्थायीलेखासं ./जीआइआरसं ./PAN No. AABCB4617L | | |
| (अपीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

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| अपीलार्थीकीओरसे/ Appellant by | : | Shri Samir Shah, Ld. AR |
| प्रत्यर्थीकीओरसे/ Respondent by | : | Shri C. T. Mathews, Ld. DR |
| सुनवाईकीतारीख/ Date of Hearing | : | 21.03.2022 |
| घोषणाकीतारीख / Date of Pronouncement | : | 02.05.2022 |

आदेश / ORDER

Per Kavitha Rajagopal, Judicial Member:

This appeal has been filed by the revenue as against the order of Ld. Commissioner of Income Tax (Appeals) – 12, Mumbai in short referred as ‘Ld. CIT(A)’ dated 11.06.2019 pertaining to AY 2011-12.

2. The brief facts of the case are that the assessee is a private limited company engaged in the restaurant business. The assessee filed its return of income on 30.09.2011 declaring total income at Rs. NIL for the AY 2011-12 and current year loss at Rs. 12,22,849/-. The return was processed u/s 143(1) of I.T. Act on 07.01.2012 determining refund of Rs. 2,03,470/-. The assessee's case was selected for scrutiny and assessment u/s 143(3) was completed on 26.02.2014 assessing total income at Rs. NIL after making an addition of Rs. 5,57,38,445/- u/s 28(iv) of the Act.

3. Aggrieved by the said order, the assessee preferred an appeal before the Ld. CIT(A) who deleted the addition of Rs. 5,57,38,445/- and allowed the assessee's appeal.

4. The revenue is in appeal before us as against the impugned order of Ld. CIT(A). The grounds of appeal are as follows:-

1. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate that as per the financials of M/s. PAN India Food Solutions Pvt. Ltd. for A.Y. 2010-11, it has recognized this amount of Rs.5,57,38,445/- on account of refund of preference share application money of Rs.3,38,94,865/- and interest on ICD of Rs.2,18,43,580/- on behalf of Blue Foods Pvt. Ltd. which was treated as a consideration for slump sale in the books of account of M/s. PAN India and since the assessee has recognized this transaction in A.Y. 2011-12, the amount of Rs.5,57,38,445/- was rightly taxed by the A. O. in A. Y. 2011-12 ? "

2. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) erred in granting relief to the assessee and failed to appreciate the fact the

waiver of loan amount is not in the nature of capital receipt and that this was not a normal business transaction and the reason for the waiver of such huge loan was not given by the assessee company. Therefore, the A. O. had correctly applied provisions of Section 28(iv) of the Act and made addition on this account to the total income of the assessee? "

3. "The appellant prays that the order of the Ld. CIT(A) on the grounds be set aside and that of the Assessing Officer be restored".

4. "The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary".

5. From the facts of the case, it is evident that the assessee company sold its running business of restaurants to M/s PAN Indian Food Solutions Pvt. Ltd. during the AY 2009-10 retaining the Coffee Bean & Leaves tenancy rights and restaurant license. Assessee has shown reserve and surplus of Rs. 5,57,38,445/- in its balance sheet dated 31.03.2011 and further the assessee has also invested Rs. 10,73,48,320/- for purchase of 1,07,34,830 shares @ Rs. 10/share in M/s PAN Indian Food Solutions Pvt. Ltd. in the earlier year. It was stated by the assessee that this investment was from an unsecured loan availed from M/s PAN Indian Food Solutions Pvt. Ltd. and that M/s PAN Indian Food Solutions Pvt. Ltd. had waived of the said loan to the tune of Rs. 5,57,38,445/- out of the total amount of Rs. 10,73,43,320/-. The AO failed to accept the contention of assessee that this was to be treated as capital receipt as the same was utilized for the purpose of acquiring capital assets on the ground that there was no proper justification from the assessee as to the reason for waiver of such

huge quantum of loan. The AO made addition of the said amount u/s 28(iv) of the Act as being directly beneficial to the assessee for investment of the shares of M/s PAN Indian Food Solutions Pvt. Ltd.

6. On appeal to the Ld. CIT(A), it was held that Section 28(iv) of the Act will not be attracted to the present case in hand as per the decision by Hon'ble Apex Court in the case of **CIT vs. Mahindra & Mahindra Ltd. 404 ITR 1 (93 taxman.com 32)** which laid the proposition that to invoke the provision of section 28(iv) of the Act, the benefit received should be in some other form instead of money and hence in the assessee's case it was by cash or money. The Ld. CIT(A) has also held that in the remand report, the AO though was directed to inquire and specify whether the sale of restaurant business took place as per market price or below that was not verified which impliedly states that the AO has failed to establish that assessee has directly benefitted due to the waiver of loan amount. The Ld. CIT(A) has categorically held that the amount benefitted through waiver of loan was in the nature of capital receipt as it was utilized for the purpose of acquiring capital assets, thereby deleting the entire addition made.

7. The revenue is in appeal before us. During the appeal proceedings, the Ld. DR was of the opinion that the appeal may be set aside to the AO for the limited purpose of ascertaining the issue whether the sale of restaurants by the assessee company to M/s PAN Indian Food Solutions Pvt. Ltd. was made as per the

market value. The Ld. AR on the other hand did not object to the same and agreed to the restoration of the appeal for the limited purpose. As both the Ld. Representatives are on consensual view, we hereby direct that the appeal be remanded back to the AO for the purpose of ascertaining whether the impugned sale of restaurant by the assessee made during the relevant year was as per market price or below market price.

8. The other grounds of appeal are consequential in nature, therefore requires no adjudication.

9. In the result, the appeal is **allowed for statistical purposes.**

Orders pronounced in the open court on 02.05.2022.

Sd/-
(Amarjit Singh)
Accountant Member

मुंबई Mumbai; दिनांक Dated : 02.05.2022
Sr.PS. Dhananjay

Sd/-
(Kavitha Rajagopal)
Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai