$~
* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
48
\+ **ITA 458/2016**

PR. CIT -3 ..... Appellant
Through: Mr. P. Roy Chaudhuri, Senior standing counsel.

versus

DKB INFRASTRUCTURE PVT LTD. ..... Respondent

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE NAJMI WAZIRI

O R D E R
% **27.07.2016**

CM APPL No. 26589/2016 (for exemption)

1. Allowed subject to all just exceptions.

ITA No. 458/2016

2. This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') is directed against the impugned order dated 11th January 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1722/Del/2011 for the Assessment Year ('AY') 2007-08.

3. The short question that is sought to be urged by the Revenue in this appeal is whether the ITAT was correct in upholding the order of the Commissioner of Income Tax (Appeals) ['CIT(A)'] who allowed the appeal

of the Assessee by deleting the addition of Rs. 70 lakhs made by the Assessing Officer ('AO') on account of unexplained credit under Section 68 of the Act?

4. It is seen that initially the AO, in his remand report, admitted that identity, creditworthiness and genuineness of 19 of 23 shareholders' were proved by documents submitted by the Assessee, i.e., details of PAN card, share application form, balance sheet and profit and loss accounts. The focus of the inquiry got narrowed down to 4 shareholders in respect of whom the AO relied extensively on the report of the Investigation Wing. However, a copy of the said report was not furnished to the Assessee. Although in respect of the said four parties, the Assessee had submitted similar documents and in addition the said four parties had filed confirmation letters along with their bank statements, they did not appear in response to the summons issued to them under Section 131 of the Act. On that basis the AO made the addition of Rs. 70 lakhs under Section 68 of the Act.

5. The CIT (A), after discussing a number of judicial precedents, noted the settled legal position that "it is mandatory for the AO to confront the assessee with any material collected by the AO at the back of the assessee, and in case of statement of third party recorded at the back of the assessee, opportunity of cross examination has to be offered to the assessee, failing which the said material/statement etc. will be rendered on unreliable and additions made on the basis of such material/statement etc. shall be rendered illegal." The CIT (A) concluded that the Assessee had discharged the onus of proving the identity, genuineness and creditworthiness of the four parties

and that it was the AO who failed to bring material on record to doubt those materials.

6. Having perused the impugned of the ITAT, which has discussed the materials on record extensively and concurred with the CIT (A), this Court does not find any substantial question of law arising for determination.

7. The appeal is dismissed.

S. MURALIDHAR, J

NAJMI WAZIRI, J

JULY 27, 2016
Rm