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

\+ ITA 678/2016

PR. COMMISSIONER OF INCOME TAX-6, NEW DELHI.
..... Appellant

Through: Mr.Asheesh Jain, Sr.Standing Counsel with Mr.Yudhvir Singh, Advocate

versus

MUNI RAM VERMA, PROP. BALAJI CHAIN CO. ..... Respondent

Through: Mr.Ved Jain and Mr.Pranjal Srivastava, Advocates

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

O R D E R

% **26.09.2016**

1. Two questions of law urged by the revenue in this appeal pertain to (1) the additions made under Section 16 (8) of the Income Tax Act to the income returned by the assessee/respondent and, (2) disallowance of interest on the borrowings used for acquisition of non-business assets and non-business purposes.

2. As to the first question, we notice that the AO added amounts advanced by 18 unsecured creditors. The total amount added was `1,95,02,979/-. The assessee had produced details and documentary evidence pertaining to the creditors which the AO took note of but was not satisfied with. On appeal, the AO produced certain additional evidence compelling the CIT (A) to seek a remand report, in view of

invocation of Rule 46A of the Income Tax Rules. After appreciation of the remand report, the CIT (A) sustained the addition only with respect to `1 lac said to have been advanced by one M/s Muskan Enterprises Private Limited. The ITAT did not disturb those findings. The revenue argues that the approach of the CIT (A) and the ITAT was incorrect because the assessee did not produce further details apart from the bank account particulars and the documents furnished.

3. This court is unpersuaded with these submissions. Reading of the order of CIT (A) shows that remand specifically was sought; after considering the remand report and submission of both the parties, the CIT (A) was satisfied that the documents particularly the bank accounts statements revealed that the creditors were not fictitious but rather had genuine accounts and that they were also filing income tax returns.

4. Given the factual nature of these findings, the court is of the opinion that the proper test to discern the identity genuineness of the transaction and the credit worthiness of parties lending the amount – as required by law, especially in ***Commissioner of Income Tax vs. Lovely Export (P) Ltd.*** **216 CTR 195 (SC)** has been followed. No question of law arises.

5. Likewise the question of interest disallowed upon such transaction on the amounts advanced by such unsecured creditors has to suffer the same fate.

6. With respect to the second question, the court notices that CIT(A) had modified the findings after an overall appreciation of the

facts. Instead of initial disallowance – which was in excess of `55 lacs, the appellate commissioner brought down the figure of disallowance to `3.69 lacs. That has been affirmed by the ITAT. Besides being entirely factual, the court is of the opinion that the AO's order itself is silent on the particulars as to the advances attributable to the specific assets upon which interest was sought to be disallowed on three counts. No question of law arises on this aspect as well.

7. As a result of the above, the appeal is dismissed as unmerited.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

SEPTEMBER 26, 2016
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