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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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\+ ITA 30/2016

R.L.TRADERS ..... Appellant
Through: Mr. K.R. Manjani, Advocate.

versus

INCOME TAX OFFICER WARD 47 (1) ..... Respondent
Through: Mr. Sanjay Kumar and
Mr. Dileep Shivpuri, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE VIBHU BAKHRU

O R D E R

% **15.01.2016**

1. This appeal under Section 260A of the Income Tax Act, 1961 ('Act') is directed against the impugned order dated 14th August 2015 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 4495/Del/2013 for the Assessment Year ('AY') 2007-08.

2. The Assessee is a partnership firm engaged in the business of purchase of starch, oil, gum and sale of hing. The Assessee filed its return of income on 30th October 2007. The Assessing Officer ('AO') determined the total income at Rs. 30,70,270, by estimating gross profit (GP) @ 15% on sale. During the assessment proceedings, it was noticed that the Assessee had shown a loan borrowed from Mr. Pradeep Kumar Bansal. By a letter dated 26th October 2009 when the Assessee was asked to produce Mr. Pradeep Kumar Bansal for verification of the loan, the Assessee requested by his letter dated 2nd

November 2009 that summons be issued to Mr. Pradeep Kumar Bansal. Accordingly, summons under Section 131 of the Act were issued to Mr. Bansal in response to which he attended and his statement was recorded. Mr. Bansal stated that he had given an entry of loan of Rs. 50,000 to the Assessee in exchange for cash and it was not a genuine loan transaction. He also volunteered that his HUF had also given bogus loan entry of Rs. 50,000 to the Assessee during the AY 2007-08. The AO accordingly concluded that the Assessee had introduced its own unaccounted money under the grab of cash credit. Therefore, the cash credit of Rs. 50,000 in the individual status and Rs. 50,000 in the status of HUF, and the corresponding amount towards interest payment, were added back to the total income of the Assessee. The AO thus made an addition of Rs. 1,34,584.

3. By an order dated 14th June 2013 the Commissioner of Income Tax (Appeals) ['CIT (A)'] partly allowed the appeal of the Assessee after seeking a remand report from the AO. Before the CIT (A) the contention of the Assessee was that the statement of Mr. Bansal was recorded at the back of the Assessee and that he was not cross-examined. Meanwhile, Mr. Bansal expired. The CIT (A) rightly observed that Mr. Bansal was in fact summoned at the instance of the Assessee and the burden was on the Assessee to prove the genuineness of the transaction and the creditor. Accordingly, the addition of Rs. 1,34,000 was confirmed. However, the order of the AO to the extent of applying a GP rate of 15% to compute the taxable income was set aside.

4. The Assessee as well as the Revenue filed appeals before the ITAT. As far as the Assessee's appeal was concerned, the ITAT, by the impugned order dated 14th August 2015, confirmed the order of the CIT (A). It is against this

part of the order that the Assessee has come in appeal to this court.

5. Mr. K.R. Manjani, learned counsel for the Assessee reiterated the submissions made by the Assessee before the CIT (A) as well as ITAT. According to him, there was interpolation of the handwritten statement of Mr. Bansal as recorded by the AO. He urged that the statement of the Mr. Bansal was recorded in no particular logical sequence and further that the Assessee was not afforded an opportunity of cross-examining Mr. Bansal.

6. Mr. Bansal was the witness of the Assessee and summoned by the AO at the instance of the Appellant. As rightly observed by the ITAT, even if the statement of Mr. Bansal were to be discarded, the fact remains that the Assessee was unable to discharge its burden of proving the genuineness of the loan taken by it.

7. Consequently, the Court does not find any error having committed either by the CIT (A) or the ITAT. The addition made by the AO was rightly confirmed by the CIT (A) and the ITAT.

8. No substantial question of law arises for determination. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

JANUARY 15, 2016
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