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

\+ **<u>ITA 13/2016 & ITA 71/2016, CM APPL.1091/2016 (12.12.2016)</u>**

MAHALAXMI BULLIONS PVT. LTD. ..... Appellant

versus

COMMISSIONER OF INCOME TAX & ANR. ..... Respondents

<u>ITA Nos.14, 15 & 18/2016 (12.12.2016)</u>

NORTH DELHI BULLION TRADERS PVT. LTD ..... Appellant

versus

COMMISSIONER OF INCOME TAX & ANR. ..... Respondents

Appearance: Mr. Shambhu Nath Singla, Advocate for assessees in all matters.
Mr. Rahul Chaudhary, Sr. Standing Counsel for the revenue in item nos.124, 125 & 126.
Mr. Ashok K. Manchanda, Sr. Standing Counsel for revenue in item nos.123& 127.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

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

% **14.12.2016**

This matter is taken up today, as 12.12.2016, when it was originally listed, was declared a holiday on account of Id-E-Milad.

The assessees' grievance in these appeals under Section 260A of the Income Tax Act, 1961 is that it was not granted adequate or sufficient opportunity to support its claim that the amount received from its share applicants was in respect of genuine transactions. The Assessing Officer (AO) had, in search and seizure proceedings, pursuant to Section 154A, issued notices on the basis of the materials gathered, questioning the correctness of the amounts said to have been received on the ground of increase in share capital.

Learned counsel for the assessees draws attention of the Court to the order of the Assessing Officer. It is stated that the AO had issued notice on 13.03.2014 requiring the assessee to furnish relevant details and supporting evidence to substantiate its claim that the amounts received were towards genuine share applications and that the identity of the share applicants too was fully disclosed. However, the AO appears to have concluded the proceedings the next day and proceeded further to rely upon letter received on 18.03.2014.

It is highlighted that the evidence was ultimately produced before the Commissioner (Appellate) who was duty bound to consider them in the light of Rule 29 of the Income Tax Rules. Not only did he ignore these materials, but the AO's order was confirmed. Likewise, the appeal to the ITAT was unsuccessful. It is stated that in these circumstances, having regard to the mandate of Rule 29, the ITAT should have remitted the matter for appraisal of the fresh materials produced before the authority.

This Court has considered the submissions and materials on the record.

The CIT (A)'s order clearly sets out specific details about the dates when opportunities were given to the assessee to substantiate its submissions. In fact on the fifth date (the previous dates being, 25.08.2014, preceded by a letter of 14.08.2014; 02.09.2014 and 09.09.2014), the CIT (A) clearly stated that final opportunity would be granted on the date fixed, i.e., 29.09.2014, failing which appeal would be decided on its merits. On the date given, i.e., 29.09.2014, neither did the appellant appear nor was any appearance on its behalf caused. Having regard to the above material, the additions were made and brought to tax; the ITAT concurred with this order.

Having regard to the above factual material and also having considered the additional documents which are now part of the record, we are of the opinion that so far as the question of opportunity is concerned, there is no occasion for interference under Section 260A of the Act. The assessee clearly defaulted - if not at the original stage, but at the appellate stage and, therefore, cannot complain that its right to adduce additional evidence was not properly appreciated. No question of law arises; the appeals are, therefore, dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

DECEMBER 14, 2016
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