$~1

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

\+ **ITA 361/2017**

PR. COMMISSIONER OF INCOME TAX-3 ..... Appellant
Through: Mr. Rahul Chaudhary, Sr. Standing Counsel.

versus

A.R. LEASING PVT. LTD. ..... Respondent
Through: None.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

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

% 03.07.2017

<u>CM No. 17091/2017 (delay in re-filing)</u>

1. For the reasons stated therein, this application is allowed. The delay in re-filing the appeal is condoned.

<u>CM No. 17090/2017 (delay in filing)</u>

2. For the reasons stated therein, this application is allowed. The delay in filing the appeal is condoned.

<u>ITA No. 361/2017</u>

3. This is an appeal under section 260A of the Income Tax Act, 1961 ('Act') filed by the Revenue against an order dated 5th September, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 3438/Del/2013 for the Assessment Year ('AY') 2009-10.

4. The issue urged by the Revenue in this appeal concerns the deletion of the addition made by the Assessing Officer ('AO') on account of alleged unexplained credit under section 68 of the Act. The deletion was ordered by the Commissioner of Income Tax (Appeals) ('CIT(A)') by the order

dated 7th March 2013, which order was confirmed by the ITAT by the impugned order dismissing the Revenue's appeal on this aspect.

5. We have heard the submission of Mr. Rahul Chaudhary, learned Senior Standing Counsel for the Revenue. We have perused the orders passed by the AO, the CIT(A) and the ITAT. The ITAT dismissed the Revenue's appeal by relying on an earlier order of the ITAT in the Assessee's own case for AY 2006-07 in ITA No. 524/Del/2014 (***Commissioner of Income Tax-III v. A.R. Leasing Pvt. Ltd.***). That order of the ITAT was confirmed by this Court by dismissing the Revenue's further appeal.

6. Mr. Chaudhary nevertheless insisted that since there was no consideration of the issue on merits, the present case should be remanded to the ITAT for a fresh consideration.

7. The CIT (A) has in para 9.1 of his order noted that the Assessee had placed before the AO the following documents of the investing companies: Memorandum of Association, Articles of Association, certificates of incorporation, bank accounts indicating the source of payment, copy of confirmations, Income Tax particulars, audited balance sheets, Profit and Loss Account etc. However, the AO disregarded the above documents and came to the conclusion that transaction of receiving money as share capital was not a genuine one primarily because the premium charged by the Assessee was much higher than the prevalent market trend. As rightly observed by the CIT (A) unless the AO had brought on record some material to show that confirmation and other evidence placed by the Assessee was not genuine, he could not have simply discarded the documents produced by the Assessee.

8. The Court too finds that there is no discussion of the above documents by the AO. In the circumstances, the conclusion reached by the CIT(A) that the addition under Section 68 of the Act was not justified appears to be unexceptionable.

9. No substantial question of law arises from the impugned order of the ITAT. The appeal is dismissed.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 03, 2017
dk