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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
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\+ **ITA 675/2016**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)- 3 ..... Appellant

Through: Mr. Zoheb Hossain, Sr. Standing Counsel and Mr. Deepak Anand, Jr. Standing Counsel

Versus

DHAMAKA TRADING & CONSTRUCTION PT. LTD. ..... Respondent

Through: Mr. S. Krishnan, Advocate

CORAM: JUSTICE S.MURALIDHAR
JUSTICE CHANDER SHEKHAR

O R D E R

% 02.05.2017

CM Nos.33416-33417/2016

For the reasons stated therein, the applications are allowed. Delay of 10 days in filing and 15 days in re-filing the appeal is condoned.

ITA No.675/2016

1.This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('the Act') is directed against the order dated 2nd February, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No.3575/Del/2013 pertaining to Assessment Year ('AY') 2008-09.

2. While admitting this appeal by order dated 14th September 2016, the following question of law was framed:

"Whether in the facts of the case, the findings of the ITAT with respect to the inapplicability of the Section 68 of the Income Tax Act were justified and sustainable".

3. Mr. Krishnan, learned counsel for the Respondent Assessee, drew

attention to the order passed by this court on 29th September, 2015 in ITA No. 683/2015 (***Principal Commissioner of Income Tax v. Vijay Conductors Pvt. Ltd.***) wherein the entire question of the disclosure made by one Mr. S. K. Gupta before the Income Tax Settlement Commission regarding providing of accommodation entries to beneficiaries through several conduit companies and obtaining of commission/brokerage was examined. The said disclosure was made by Mr Gupta consequent upon a survey operation under Section 133 A of the Act. One such 'conduit company' was the Assessee in the above case i.e. Vijay Conductors Pvt. Ltd**.** The Court held that the conduit companies were not the beneficiaries of such accommodation entries and, therefore the order of the ITAT deleting the additions in their hands under Section 68 of the Act did not suffer from any legal infirmity. The Revenue's appeal was dismissed and thereby an order dated 28th January 2015 of the ITAT in a batch of appeals was affirmed.

4. The above order in ***Principal Commissioner of Income Tax v. Vijay Conductors Pvt. Ltd.*** (*supra*) was followed by this Court in its order dated 6th October 2015 in ITA No. 707 of 2015 (***Principal Commissioner of Income Tax v. Omni Farms Pvt. Ltd.***) Thus the Court affirmed the order dated 28th January 2015 of the ITAT in ITA No. 3477/Del/2013.

5. However another bench of the ITAT made a departure in its order dated 22nd April 2015 in ITA No. 3576/Del/2013 while dealing with the appeal of one more of the 'conduit companies' Rapid Packaging Ltd. The ITAT by the said order remanded the matter to the Assessing Officer (AO) to verify the disclosure made in the case of Mr S K Gupta before the ITSC and whether

the cash deposited in the case was covered by such disclosure.

6. In the case on hand, the ITAT has by the impugned order dated 2nd February 2016 followed its earlier decision dated 28th January 2015 in ITA 3477/Del/2013 and deleted the additions made by the AO in the hands of the Assessee under Section 68 of the Act.

7. The main plank of the Revenue's case before this Court is the order of the ITAT in the case of Rapid Packaging Ltd. Mr. S. Krishnan has placed before us the assessment order passed by the AO in the case of Rapid Packaging Ltd. on 30th December 2016 consequent upon the remand by the ITAT by the order dated 22nd April 2015. The AO has "assessed at return (ed) income". In other words the AO has made no additions under Section 68 of the Act even in the case of Rapid Packaging Ltd. which is one more of the 'conduit companies' like the Assessee herein.

8. In that view of the matter, the impugned order dated 2nd February 2016 of the ITAT in the present case calls for no interference. The question framed is answered in the affirmative i.e., in favour of the Assessee and against the Revenue.

9. The appeal is accordingly dismissed.

S.MURALIDHAR, J

CHANDER SHEKHAR, J

MAY 02, 2017/b