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

\+ **ITA 911/2016**

PR. COMMISSIONER OF INCOME TAX-9 ..... Appellant
Through: Mr. Rahul Chaudhary, Sr. Standing counsel with Mr. Sanjay Kumar, Advocate.

versus

VITAL COMMUNICATION LTD. ..... Respondent
Through: Dr. Rakesh Gupta with Mr. Somil Agarwal, Ms. Monika Ghai, Mrs. Shyamalima Borah & Mr. Rohit K. Gupta, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

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

% 25.07.2017

1. The Revenue is in appeal under Section 260A against the order dated 15th June, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2448/Del/2007 for the Assessment Year (AY) 2003-04.

2. The questions sought to be urged by the Revenue in the present appeal are as under:

> i) Whether the ITAT erred in law in holding that Section 68 of the Income Tax Act would be attracted only when money is brought in by way of cash/ cheque/ demand draft?
>
> ii) Whether allotment of shares under a arrangement could attract provisions of Section 68?

> iii) Whether the deletion of additional amount of unexplained credit under Section 68 of the Act in the facts and circumstances was justified?

3. In the present case, against the assessment order passed by the Assessing Officer ('AO') on 31st March, 2003 under Section 143(3) of the Act by which additions were made under Section 68 of the Act, the Assessee went in appeal before the Commissioner of Income Tax (Appeals) ['CIT(A)']. During the course of the appeal proceedings, the CIT(A), in light of the documents placed on record by the Assessee , called for a remand report from the AO. After considering the AO's remand report, the CIT(A) passed a detailed order dealing with each of the reservations voiced by the AO based on the additional evidence submitted by the Assessee.

4. In that process, the CIT(A) came to the conclusion that the expression 'sum' as occurring under Section 68 of the Act denotes money brought into the account books by way of cash, cheque and demand draft. The mere transfer of entries from one head to another cannot be treated as 'sum'. Likewise, swapping of shares under an arrangement between the entities would not attract Section 68 of the Act.

5. However, the learned CIT (A) did not stop there. He proceeded to deal with the additions on merits as well. The order of the CIT(A) contains a very detailed discussion of the evidence placed on record and on each of the points expressed by the AO in the assessment order.

6. The additions were accordingly deleted by the CIT(A) by the order dated 1st March, 2007. Therefore, the Revenue went in the appeal before the ITAT. By the impugned order, the ITAT affirmed the order of the CIT(A).

7. Mr. Rahul Chaudhary submitted that the CIT(A) and the ITAT were in error as to the word 'sum' occurring in Section 68 of the Act. This was contrary to the decisions of the Bombay High Court in ***Dharmavat Provision Stores v. CIT, (1983) 139 ITR 700 (Bom.)*** and ***Smt. Rekha Krishna Raj v. Income-tax Officer, Ward-I, Hospet (2013) 33 taxmann.com 64 (Karnataka)***.

8. Had the CIT (A) stopped with the above discussion and reversed the AO only on the legal issue, there may have been some merit in the contention of the learned counsel for the Revenue. However, the CIT (A) has, notwithstanding his conclusion of the legal issue, examined the case on merits and in considerable detail, each of the allegations made by the AO with reference to the remand report as well as the assessment order and returned a factual finding supporting his conclusion that the additions made by the AO under Section 68 of the Act were not justified. In particular, the CIT (A) disagreed on facts that the Assessee had failed to establish the genuineness and creditworthiness of the persons/entities which contributed to the share capital of the Assessee. The above factual findings have been affirmed by the ITAT.

9. Unless the findings of CIT(A) and ITAT are shown to be perverse, in the considered view of the Court, no interference is called for with the

impugned order of the ITAT under Section 260A of the Act.

10. Therefore, leaving open the question concerning the interpretation to be placed on the word ‘sum’, under Section 68 of the Act for consideration and appropriate case, this Court is of the view that no substantial question of law arises for consideration from the impugned order of the CIT(A) as well as ITAT.

11. The appeal is accordingly dismissed.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 25, 2017
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