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

\+ **ITA 833/2016**

THE PR. COMMISSIONER OF INCOME TAX-9 ..... Appellant
Through : Mr. Ruchir Bhatia, Senior Standing Counsel.

versus

VAM -HI-FASHION GARMENTS PVT. LTD. ..... Respondent
Through : Mr. Satyen Sethi, Mr. Arta Trana Panda & Ms. Gargi Sethee, Advocates.

CORAM: JUSTICE S.MURALIDHAR
JUSTICE PRATHIBA M. SINGH

ORDER

% **04.07.2017**

CM APPL. No. 43457/2016 (delay in filing)

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

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2. This is an appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act') against an order dated 21st March, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 494/DEL/2016 for the Assessment Year ('AY') 2010-11.

3. While admitting the appeal on 20th December, 2016, this Court framed the following question of law:-

> “ Did the ITAT fall into error in regard to its interpretation of Section 68 of the Income Tax Act, 1961 so far as the sum of Rs. 3.10 crores in issue is concerned?”

4. For the AY in question, one of the issues considered was the identity, genuineness and creditworthiness of the Investor, Mr. Suveer Arora, who purportedly purchased shares worth Rs. 3,10,00,000/- of the Assessee company, which constituted 24% of the equity share capital. In support of the above stand of the Assessee, the following documents were produced in the course of the assessment proceedings :-

a. Confirmation from Mr. Suveer Arora
b. Copy of PAN Card of Mr. Suveer Arora .
c. Copy of Bank Statement showing the investment made and source thereof.
d. Copy of Form No.2 regarding allotment of shares
e. Copy of Passport of Mr. Suveer Arora
f. Copy of Income Tax Return and assessment order passed u/s. 143(3) for A.Y. 2010-11.

5. The following two other documents were also considered by the CIT (A):

g. Copy of letter dated 14th February 2013 during the assessment proceedings in the case of Mr. Suveer Arora in respect to issue of share capital to assessee.

h. Affidavit of Mr. Suveer Arora.

6. It must be pointed out that the assessment of Mr. Suveer Arora for the same AY was completed under Section 143(3) of the Act. After considering all of the above documents, the ITAT came to the conclusion that there was no ground to dispute the genuineness of the investment.

7. In response to the query from the Court, Mr. Bhatia confirmed that the

assessment order passed in the case of Mr. Suveer Arora under Section 143(3) of the Act was not re-opened by the Revenue by invoking Section 263 of the Act. In the circumstances, the mere fact that Mr. Suveer Arora was not produced by the Assessee before the AO for examination will not detract from the identity, genuineness and creditworthiness of the Investor.

8. The conclusion reached by the ITAT cannot be said to be suffering from any legal infirmity. The question framed is, accordingly, answered in the negative, i.e. in favour of the Assessee and against the Revenue.

9. The appeal is dismissed.

S.MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 04, 2017
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