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

\+ ITA 222/2018 and CM APPL. 7013/2018

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL)- 1
..... Appellant

Through Mr. Sanjay Kumar and Mr. Rahul Chaudhary, Standing Counsel.

versus

M/S FIIT JEE LTD. ..... Respondent

Through None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **23.02.2018**

The Revenue, aggrieved by the order of the Income Tax Appellate Tribunal (ITAT), filed the instant appeal under Section 260A of the Income Tax Act, 1961 ('the Act'); the year in question is AY 2004-05. The Assessing Officer (AO) had made assessment under Section 143(1) in the first instance on the returns of the assessee under Section 141 of the Act; later, acting upon the information received, assessment was re-opened and a sum of Rs.1,39,32,757/- was brought to tax on the ground that it represented bogus claims for payments made towards the services rendered. The CIT(A) and ITAT set aside the re-assessment on the ground that the objections to the re-assessment notice were never decided. Both these appellate authorities relied upon the judgment of this Court in *Keshav*

Shares and Stocks Ltd. vs. ITO, (2010) 326 ITR 553 (Del). It is pointed out that in that judgment, the Court had not quashed the re-assessment order in entirety, but, remanded the matter to the AO for first deciding the objections and thereafter, proceed further depending on the view taken.

This Court notices that on the merits of additions made i.e. disallowance of the credit claimed, the ITAT and this Court had ruled against the Revenue. The Revenue had premised the re-opening of assessment on the basis of a statement made by one Mr. S.K. Gupta. The AO in the re-assessment order refused to give effect to the retraction of that statement, brushing aside the later statement, on the ground that it was made years later. At the same time, this Court for another Assessment Year (AY 2002-03) held that whilst it was open to the AO to not rely upon the statement taken into account or rather ignore the retraction, yet, primary duty to verify the soundness of the claim of having been made genuine payment had to be gone into and verified. This was not done and consequently in ITA 19/2018 Principal Commissioner of Income Tax (Central)-I vs. M/s FIIT JEE Ltd. decided on 9.1.2018, the Court upheld the order of ITAT setting aside the additions on merits made during the re-assessment. This Court had then observed, as follows:

> *".........The facts of the case are that for A.Y. 2002-03, the scrutiny assessment was completed on 17.12.2005 bringing to tax a total amount of Rs.1,95,97,564/-. Re-assessment proceedings were initiated on 04.03.2009 and completed by the Assessing Officer (AO), who added back the sum of Rs.1,14,12,184/- on the basis that expenses claimed for various*

activities such as web advertising, web designing, commission of franchise advertisement charges and software development, as claimed, could not be sustained, as the entries with respect to the service providers were bogus. The AO premised his findings largely upon statement of one Mr. S.K. Gupta on 13.12.2006, who stated that he had provided entry accommodation to various entities.

Upon appeal, the CIT(A) deleted the additional sum i.e. Rs.1.14 Crores after verifying the expenses and observing that the payments were made through banking channels and that the service providers, in respect to whom expenses were claimed, were income tax assessees. The ITAT confirmed these findings.

Upon an overall conspectus of the circumstances, it is evident that the CIT(A) carried out a detailed analysis of the material on record, including, especially with respect to the genuineness of the transaction, whereby, the service providers were paid money towards expenses claimed in the assessee's returns. These findings are also collaterally supported by the fact that the service providers were income tax assessees. The ITAT confirmed these findings of fact. In the opinion of the Court, no question of law arises.

The appeal is therefore dismissed."

For the same reasons, since on the merits, the additions are not sustainable, the Court is of the opinion that no substantial question of law arises. The appeal is consequently, dismissed.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

FEBRUARY 23, 2018
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