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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO. 957 OF 2017

Pr. Commissioner of Income Tax-8 … Appellant

V/s.

M/s. Realvalue Realtors Pvt. Ltd. ... Respondent.

Mr. Suresh Kumar for the Appellant.

Mr. Mihir Naniwadekar for the Respondent.

CORAM : M.S. SANKLECHA &
NITIN JAMDAR, JJ.

DATE : 4 NOVEMBER 2019.

P.C. **:-**

By this Appeal the Appellant Revenue challenges the order passed by the Income Tax Appellate Tribunal dated 30 June 2016. The relevant assessment year is 2007-08. The following questions of law are urged for our consideration :-

> *"1. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was justified in deleting the addition of Rs.5,18,44,700/- u/s. 68 of the I.T. Act, 1961 on account of share application money received*

from Mr. Mustaq Ahmed Vakil without appreciating the fact that the assessee has failed to prove the genuineness of the share transactions and the creditworthiness of the shareholder ?

2. Whether on the facts and circumstances of the case and in law, the Hon'ble ITAT was erred in appreciating the facts that the assessee has passed fresh credit entry in its books of account for conversion of share application money into its share subscription and share premium, accordingly, Section 68 is correctly applied in the case of the assessee in the year under consideration ?"

2. The Respondent - Assessee is engaged in the business of dealing in property and trading in shares and stock. The Assessee filed its return of income declaring the total income as Rs.115778/-. The Assessing Officer, during the assessment proceedings, noted that in the relevant previous year the Respondent had received an amount of Rs.81244700/- from one Mushtaq Ahmed Vakil as share application money. The Respondent allotted 2421788 shares to Shri Vakil. The Assessing Officer treated the amount shown as a share application money as unexplained cash credit and issued a show cause to the Assessee. The Assessing Officer called upon the Assessee to prove the genuineness of the share transaction by producing necessary evidence. The Assessing Officer held that the Assessee had failed to discharge the onus of establishing genuineness of the transaction and creditworthiness of the shareholder and added an amount of Rs.81244700/- as income from other sources.

3. The Assessee filed an Appeal before the Commissioner of Income Tax (Appeals). The Commissioner called for a remand report from the Assessing Officer. The remand report was submitted by the Assessing Officer. The Commissioner, after going through the remand report, concluded that out of total share application money of Rs.81244700/- an amount of Rs.51844700/- was received in the Assessment Year 2006-07 and could not be added in the impugned assessment year. The Commissioner accordingly directed the Assessing Officer to take necessary action if required. In respect of the remaining amount of Rs.2.94 crores, the Commissioner observed that sufficient evidence was produced in respect of the identity and genuineness of the share application money and of Shri Vakil and accordingly deleted the said addition.

4. The Appellant – Revenue filed an Appeal before the Income Tax Appellate Tribunal. The Tribunal confirmed as regard the finding as regards Rs.5,18,44,700/- not pertaining to the relevant Assessment Year. As regard the amount of Rs.2.94 crores, the Tribunal set aside that part of the order of the Commissioner and remanded the matter to the Assessing Officer to examine the genuineness of the investment of Rs.2.94 crores by Shri Vakil. Accordingly, the Appeal was partly allowed by the impugned order.

5. We have heard Mr. Suresh Kumar, learned Counsel for

the Appellant and Mr. Mihir Naniwadekar, learned Counsel for the Respondent.

6. As far as the amount of Rs.5,18,44,700/- is concerned, both the Commissioner (Appeals) and the Tribunal have, after considering the records, categorically held that this amount was relevant for the Assessment Year 2006-07. In fact the Assessing Officer in his remand report dated 16 September 2010 has accepted this position. As regard the amount of Rs.2.94 crores is concerned, the Tribunal has sent the same for verification by the Assessing Officer. The contentions of the parties regarding this amount about its genuineness, etc. would be considered on remand.

7. In the circumstances, both the questions framed placed for consideration do not give rise to any substantial question of law. The Appeal is dismissed.

NITIN JAMDAR, J. **M.S. SANKLECHA, J.**