$~18 & 49

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

\+ **<u>ITA 101/2019</u>**

\+ **<u>ITA 103/2019, C.M. APPL.4937/2019</u>**

THE PR. COMMISSIONER OF INCOME TAX -2- AGRA..... Appellant

Through : Sh. Puneet Rai, Advocate, for appellant in Item Nos. 18 and 49.

versus

SH. SUMIT MITTAL ..... Respondent

Through : Sh. Kislaya Parashar and Ms. Umang Luthra, Advocates, for respondent in Item Nos. 18 and 49.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE PRATEEK JALAN

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

% 01.02.2019

1. In this appeal, the Revenue is aggrieved by the orders of the Income Tax Appellate Tribunal (ITAT) for Assessment Years (AYs) 2007-08 and 2008-09. It contends that the amounts reported by the assessee for these years, towards various heads, are erroneous.

2. For AY 2007-08, the Assessing Officer (AO) disallowed the amounts under three heads – firstly, towards agricultural income claim; secondly business loss (to the tune of ₹3,62,384/-) and thirdly, cash deposit of ₹26,90,000/-. Both the CIT(A) and the ITAT set aside the disallowances.

3. The substantial amount of ₹26,90,000/- brought to tax under Section 68 of the Income Tax Act, 1961 [hereafter “the Act”], was held to have been received from one M/s. Mittal Traders on different dates and deposited in the assessee’s bank.

4. The CIT(A) relied upon the cash flow statements and the appellant's books reflecting rental receipts, agricultural income and cash received from M/s. Mittal Traders and was of the view that when the assessee contended that he had received money in cash from one investor or creditor and the money represented series of credits in its accounts, the AO had to verify the identity, creditworthiness and genuineness of the transactions.

5. The CIT(A) noted that the assessee had supplied the requisite details, such as the PAN particulars of Ms. Raj Kumari, who was an income tax assessee for 30 years and had declared her income; her sources of income too were disclosed; as such, the relevant burden placed upon the assessee had been fulfilled. Consequently, the CIT(A) set aside the amounts brought to tax.

6. For the subsequent year, with respect to the sum of ₹7,56,54,052/-, the assessee had contended that the amount deposited by him in cash was received from one Veerendra Kumar, Association of Persons (AOP), comprising of 52 members, towards shares which were pledged/transferred to the members of the AOP. The AO did not allow the amounts and brought them to tax under Section 68 of the Act. The CIT(A) and the ITAT, however, reversed this finding after noticing that the details of each member of the AOP, their identities as well as the returns and other particulars had been furnished to the AO. The narrow ground on which the AO disallowed the amounts received towards share transactions was that AOP was not an income tax payee.

7. This Court notices, at the outset, that the assessee never claimed that the AOP was a firm or income tax payee. By all accounts, it appears to have been formed only by way of a venture for only one transaction, i.e. securing of shares, which was the subject matter of business venture. In these circumstances, the concurrent finding of fact on this account is sound and does not call for interference.

8. The Court is of the opinion that the questions urged by the Revenue do not amount to substantial questions of law.

9. The appeals are accordingly dismissed along with the pending application.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

FEBRUARY 01, 2019/ajk