$~70

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

\+ ITA 216/2019 & CM Appl. 10407/2019

SHRI RAJESH KUMAR BHARDWAJ ..... Appellant
Through: Mr. N.P. Sahani & Mr. Rupesh Sinha, Advs.

versus

INCOME TAX OFFICER, WARD 2(3), NEW DELHI..... Respondent
Through: Mr. Zoheb Hossain, Sr. Std. Counsel.

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

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

% **06.03.2019**

1. The assessee is aggrieved by the concurrent findings of the lower appellate authorities in respect of addition to the extent of ₹1,01,62,085/- under Section 68 of the Income Tax Act.

2. The controversy in this case is that the assessee for A.Y. 2010-11 declared total income of ₹ 13,64,060/- as income from business and profession and income from other sources. The AO noticed that in the schedule forming part of the balance sheet, the assessee had claimed an unsecured loan of ₹ 9.4 crores from various persons on 31.03.2010. The amount was disallowed treating it to be unexplained credit. On appeal, the CIT(A) confirmed the addition of ₹ 1,01,62,085/- as against the original addition of ₹ 2,10,47,087/-. The other amounts included the amounts on account of current liabilities/advances and confirmed additions of ₹ 12,40,000/-. Eventually, when the ITAT was approached by the assessee,

against the impugned order the addition to the extent of ₹1,01,62,085/- was affirmed.

3. The assessee urges that the amounts added under Section 68 and brought to tax reflected advances given by 40 agriculturists towards a proposed housing scheme. It was contended that upon notices issued under Section 133(6) of the Act, all the 40 creditors had responded giving the relevant particulars which included copies of their voter identity cards and affidavits. In the absence of any further enquiry, it is submitted that the addition made could not have been sustained.

4. Learned counsel furthermore submitted that the creditors reflected in the assessee's balance sheet were not even asked to produce any other material to supplement their statement, and the consequential additions under Section 68 were unwarranted. This Court is of the opinion that the findings of AO as well as the lower appellate authorities are concurrent, as such the Court circumspects in holding against these findings. That apart, the Court notices that the ruling of the Supreme Court in *Commissioner of Income Tax vs. Lovely Exports Private Limited* (2010) 14 SCC 761 affirms the position that with respect to the credits, especially cash deposits etc., the initial burden lies upon the assessee to establish by way of the three prong test, that the advances or credits claimed are genuine, first the identity of the creditor; second, the genuineness of the transactions, and third, creditworthiness of the creditor.

5. In this case, the Court is satisfied that while the first element i.e. the identity of the creditors was proved by some material, the other two

elements were not established at all. In this regard, the assessee's contentions that the agriculturists were not asked to produce any material to supplement their statement is inconsequential. The law in this regard is and always has been that the onus of the initial burden lies upon the assessee, who has to make the necessary efforts to produce the material.

6. For the above reasons, this Court is of the opinion that no substantial question of law arises. The appeal is therefore dismissed.

S. RAVINDRA BHAT, J

PRATEEK JALAN, J

MARCH 06, 2019
'pv'