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

\+ **ITA 564/2019**

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2 ..... Appellant

Through: Mr. Zoheb Hossain, Senior Standing Counsel for Revenue

versus

M/S FORUM AGRO FOODS PVT. LTD. ..... Respondent

Through: None

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **05.07.2019**

CM APPL. 29647/2019 (delay)

1. For the reasons explained in the application, the delay in re-filing the appeal is condoned and the application is allowed.

ITA 564/2019

2. The Revenue is in appeal against an order dated 28th September, 2018 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 2394/Del/2018 for the Assessment Year (AY) 2013-14.

3. The question of law sought to be urged by the Revenue is whether the ITAT was justified in quashing the order passed by the Principal Commissioner of Income Tax (PCIT) under Section 263 of the Income Tax Act, 1961 (the 'Act') by holding that the provision of Section 2 (22) (e) of

the Act in respect of the issue of deemed dividend would not be attracted in the facts and circumstances of this case?

4. A search and seizure operation under Section 132 of the Act was conducted in the AMQ Group of Companies. According to the Revenue, certain incriminating documents belonging to the Assessee were seized. Assessment proceedings under Section 153 C read with Section 143 (3) of the Act were initiated against the Assessee. The assessment was finalised in sum of Rs.390 lakhs against the Nil income return filed.

5. After the assessment order was passed on 31st March, 2016, the PCIT decided to invoke Section 263 of the Act. According to the PCIT, the assessment order was both erroneous and prejudicial to the interest of the Revenue to the extent that the assessment had been completed without proper examination of the verification of the transaction with M/s AMQ Agro India Pvt. Limited (AAIPL). It was observed that Ms. Nasreen Moin Qureshi was having a share holding of 33% in the Assessee company and 73% in AAIPL. There was an advance of Rs.2.5 crores which was shown as outstanding in the balance sheet of the Assessee as on 31st March, 2013. According to the PCIT, Assessing Officer (AO) had completed the assessment without properly verifying the applicability of Section 2(22)(e) of the Act.

6. In the impugned order the ITAT has noted that in the course of assessment proceedings the Assessee had in fact placed on record the entire audited statements as well as the balance sheet which showed that sum

received by the Assessee through AAIPL had been converted to shares allotted to AAIPL during Assessment Year 2014-15.

7. Relying on the position in ***Principal CIT v. Brahmdev Gupta, (2018) 408 ITR 91*** Mr. Hossain, learned Senior standing counsel for the Revenue urged that the ITAT could not have substituted its own view on merits for that of the AO and it was properly within the domain of the PCIT to require a fresh assessment exercise to be undertaken in the facts and circumstances of the case.

8. The Court having examined the said decision is of the view that in the facts and circumstances of the present case, the exercise of sending the matter back to the AO for a fresh assessment pursuant to the impugned order of the PCIT under Section 263 of the Act is not warranted. The Revenue has not been able to persuade this Court that the amount received from AAPIL was not converted to share capital and remained in the nature of loans and advances. That fact is reflected as such in the balance sheet. Consequently, the observation of the ITAT that the order passed by the AO is not erroneous and Section 2(22)(e) of the Act is not attracted, does not call for interference. It would be a mere academic exercise to require the AO to undertake a fresh assessment.

9. Consequently, in the facts and circumstances of the case, the Court is of the view that no substantial question of law arises from the impugned order of the ITAT.

10. The appeal is accordingly dismissed.

S.MURALIDHAR, J.

TALWANT SINGH, J.

JULY 5, 2019
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