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

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+ **ITA 581/2019**

PR. COMMISSIONER OF INCOME-TAX- 7, NEW DELHI Appellant

Through: Mr Ajit Sharma, Senior Standing
Counsel and Ms Adeeba Mujahid,
Junior Standing Counsel for Revenue.

versus

RYDERMATIC BEVEL GEARS PRIVATE LTD.

..... Respondent

Through: None.

CORAM:

JUSTICE S.MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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08.07.2019

1. This is an appeal by the Revenue against an order dated 28th December, 2018 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 6574/Del./2014 for Assessment Year ('AY') 2010-11.

2. The question sought to be urged by the Revenue before this Court is whether the ITAT erred in upholding the deletion made by the Commissioner of Income Tax (Appeals) ['CIT(A)'] of the addition of Rs.1,56,15,135/- under Section 68 of the Income Tax Act, 1961 ('Act') on account of unexplained credit.

3. The brief facts are that the Assessee filed a return of income for the AY in question declaring a loss of Rs.5,48,155/-. The return was picked up for scrutiny. Notice under Section 142 (1) of the Act and a detailed questionnaire was issued to the Assessee for furnishing the relevant details.

Thereafter, the assessment was finalized at an income of Rs. 2,67,36,788/-. One item of addition was an 'unsecured loans' for the sum of Rs.1,56, 15,135/-, which according to the Assessing Officer ('AO') had not been proved by the Assessee to be as a result of genuine loan transactions.

4. In the appeal filed by the Assessee before the CIT (A), a remand report was called from the AO. After the remand report was submitted, the comments of the Assessee were called for. After considering the explanation offered by the Assessee, the CIT (A) by the order dated 1st September, 2014, while partly allowing the appeal, deleted the above addition. This has been affirmed by the ITAT.

5. At the outset, a submission is made by learned counsel for the Revenue that with Assessee not having participated in the proceedings before the ITAT, the matter ought to have been remanded by the ITAT to the CIT (A) for a fresh determination.

6. The Court finds that before the CIT (A), the Authorized Representative ('AR') of the Assessee did appear and offered an explanation. That has been considered in some detail by the CIT(A). On merits, the CIT (A) was not convinced with the conclusion drawn by the AO in the remand report. Consequently, this Court is unable to agree with the submission that the matter ought to have been remanded to the CIT (A) for a fresh determination.

7. On merits, it is seen that the aforementioned loan amount was from four sources as under:

(i)	Jyoti Kukreja	61,75,586.93
(ii)	Suresh Kukreja	88,39,548.59
(iii)	Deepak Bhatia	2,00,000.00
(iv)	Nancy Bhatia	<u>4,00,000.00</u>
		<u>1,56,15,135.52</u>

8. Of the above, the loans borrowed from Deepak Bhatia and Nancy Bhatia of Rs.2 and 4 lacs respectively were old loans and, therefore, rightly not treated by the CIT (A) as income of the Assessee.

9. As regards the loans given by Jyoti Kukreja and Suresh Kukreja, the bank statements, addresses and PAN numbers of the said two individuals were provided. The CIT (A) found no reason to disbelieve the creditworthiness of the two individuals or the genuineness of the loan transactions. Indeed, if the AO had any doubt in this regard, he could have summoned and recorded the statements of the said individuals, which option was not chosen to be exercised. This being a factual determination by the CIT (A), and having been concurred with by the ITAT, the Court does not find any reason to interfere.

10. No substantial question of law arises for determination by the Court. The appeal is accordingly dismissed. No costs.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 08, 2019
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