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

\+ **ITA 602/2019**

THE PR. COMMISSIONER OF INCOME TAX -5 ..... Appellant
Through: Mr Ruchir Bhatia, Advocate

versus

KAUTILYA MONETARY SERVICES PVT. LTD. .... Respondent
Through: None.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

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

% **10.07.2019**

1. This is an appeal by the Revenue against the impugned order dated 30th November 2018 of the ITAT in ITA No.5975/Del./2014 for the Assessment Year 2005-06.

2. The question sought to be urged by the Revenue is whether the ITAT was justified in upholding the decision of the Commissioner of Income Tax (Appeals) ['CIT(A)'] in deleting the addition of Rs.2.13 crores made by the Assessing Officer ('AO') to the income of the Assessee under Section 68 of the Income Tax Act, 1961 ('the Act'). The further question urged is whether the ITAT erred in affirming the decision of the CIT(A) that the initiation of reassessment proceeding under Section 147 of the Act instead of Section 153C of the Act was bad in law.

3. The brief facts are that the Assessee is a private limited company engaged

in non-banking finance business. It filed its return of income for the AY in question declaring a loss of Rs.48,770/-. The return was picked up for scrutiny and completed under Section 143(3) of the Act accepting the return income by an order dated 29th November 2007.

4. According to the Revenue, the investigation wing provided information that the Assessee had indulged in accommodation entries which came to light during the post search investigations while examining the seized records of Shri S.K.Jain Group of Companies. A notice under Section 148 of the Act was accordingly issued to the Assessee on 30th March 2012. The objections raised by the Assessee to the reopening of assessment were rejected by the AO.

5. The AO asked the Assessee to explain the receipt of amounts from the following entities:

Sl.No.	Name of the Parties	Amount (Rs.)
1.	M/s Karishma Industries Ltd.	51,00,000/-
2.	M/s Steller lnvestment Ltd.	51,00,000/-
3.	M/s Graph Financial Services Pvt. Ltd.	30,00,000/-
4.	M/s Lovely Securities Pvt. Ltd.	40,50,000/-
5.	M/s Hillridge Investment Ltd.	40,50,000/-

6. The Assessee filed the bank accounts, Memorandum of Articles of Association and the PAN numbers of the above companies to prove their identity, genuineness and the credit worthiness of the transactions. The Assessee also filed confirmation letters of the above parties.

7. The AO rejected the explanation offered by the Assessee and proceeded to make the abovementioned addition to the income of the Assessee under Section 68 of the Act.

8. The CIT (A) allowed the appeal by the Assessee by an order dated 29th August 2014. It was noted that the incriminating documents relied upon by the AO were seized during the search under Section 132 of the Act and, therefore, the assessment proceedings should have been initiated under Section 153(C) of the Act. It is further noted that all details with regard to the share applications received by the Assessee were on the record of the AO during the course of original assessment proceedings under Section 143(3) of the Act. Therefore, the reopening of the assessment after expiry of 4 years was held to be not justified. The addition was deleted on merits also.

9. The ITAT has in the impugned order affirmed the above order of the CIT (A). It has concurred with the CIT (A) on both grounds. The details of the information provided by the Assessee to the AO have been discussed by the ITAT. There were several parties from whom the Assessee had accepted share application money. Out of the 2,30,000 equity shares issued, 56,800 shares were issued to the 5 parties in question as listed above. While the AO accepted the share application and share premium with respect to the other shareholders, he rejected the same only in respect of these 5 parties. This was done by the AO without issuing notices under Section 133(6) of the Act. It was rightly observed by the ITAT that once the Assessee had discharged the initial onus by furnishing a necessary document to prove the identity and creditworthiness of the share applicants, the onus shifted on to

the Revenue. The AO could have inquired into the matter further but did not choose to do so.

10. Having heard the submissions of learned counsel for the Revenue, this Court is not persuaded to take a different view in the matter. Indeed with the Assessee having furnished the complete details of the 5 parties necessary for proving their identity, genuineness and creditworthiness, it was for the AO to have made further inquiries if he were to doubt those details. Without undertaking that exercise, the AO is not justified in simply rejecting the explanation offered by the Assessee.

11. Even as regards the reopening of the assessment under Section 147 of the Act, the Court finds that CIT(A) was right in holding that with the Assessee having furnished all the details during the original assessment proceedings, the reopening of the assessment after the expiry of 4 years did not meet the jurisdictional requirement under Section 147 of the Act.

12. The Court is unable to find any illegality or infirmity in the impugned order of the ITAT. No substantial question of law arises. The appeal is accordingly dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 10, 2019 / tr