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

\+ **ITA 693/2019**

PR. CIT-9 NEW DELHI ..... Appellant

Through: Mr. Ajit Sharma and Ms. Adeeba Mujahid, Advocates

versus

M/S. VNG PACKAGING PVT LTD ..... Respondent

Through: None

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

O R D E R

% **26.07.2019**

1. The Revenue is in appeal against an order dated 8th April, 2019 passed by the Income Tax Appellate Tribunal (ITAT) in ITA No. 2742/Del/2017 in the Assessment Year (AY) 2010-11.

2. The issue sought to be urged by the Revenue is whether the ITAT is justified in setting aside the order passed by the Principal Commissioner of Income Tax (PCIT) under Section 263 of the Income Tax Act, 1961 (the Act) requiring the Assessing Officer (AO) to revisit the assessment made earlier of the Assessee by the order dated 29th March, 2015 under Section 147/143 (3) of the Act?

3. The PCIT decided to evoke the jurisdiction under Section 263 of the Act specific to the issue of the investments made in the Assessee company which

according to the PCIT had not merited enough attention in the original assessment order. It was noted by the AO in para 2 of the original assessment order as under:

> "2. The assessee company has been engaged in the business of investment in shares. During the year under consideration the assessee company has not done any business."

4. The Assessee then appealed to the ITAT which has by the impugned order come to the conclusion that the invocation of Section 263 of the Act was not warranted.

5. With the assistance of the learned counsel for the Revenue, the Court has examined carefully the impugned orders of the PCIT as well as the ITAT. An outstanding factor, which according to the ITAT, clinched the issue was discussed by it in para 8 of the impugned order which reads as under:

> "8. One more important fact which clinches the entire issue and separates the case of the assessee from all other cases of share capital and share premium is that, here it is not the case where the assessee has received any money in form of cash or cheque in lieu of share application or share premium; rather the assessee had received investments in form of equity shares held by these companies in their balance sheet for a long time and duly disclosed in their income tax particulars. This fact is undisputed and is clearly borne out from various replies filed by the assessee before the Assessing Officer and also before the Ld. PCIT. The details of investments purchased by the assessee company in lieu of share allotment for the F.Y. 2009-10 is reproduced hereunder:"

6. The ITAT then proceeded to discuss in detail, the figures in the accounts pertaining to each of the companies whose shares had been transferred to the

Assessee in lieu of allotment of its shares at face value of shares. This was in a sense an exchange. The ITAT interpreted Section 68 of the Act in the light of the above facts and observed in para 10 of the impugned order as under:

> "10. Ergo, when assessee in lieu of allotment of shares including face value of shares as well as premium amount, has received investments in the form of equity shares of various companies, then whether these companies had availability of cash or not may not be very relevant factor. The creditworthiness which is required to be examined u/s. 68 can be with regard to the transaction in form of any money either in cash or cheque. To invoke the deeming provisions of section 68, it is axiomatic that the credit appearing in the books of account maintained by the assessee should be with reference to any .sum received by the assessee. If the assessee has not received any sum in terms of any money, i.e., in cash or cheque, then deeming provision of section 68 will not apply."

7. The impugned order of the ITAT noted that the AO did undertake a detailed inquiry and got the entire records from the 15 companies and therefore, it could not be said that he failed to investigate the genuineness and creditworthiness of the source of funds. The identities of the parties were not in dispute. The genuineness of the transaction was held to have been fully proven by the fact the companies had given shares to the Assessee in lieu of the shares allotted to them. And lastly, there was no requirement to examine the creditworthiness of any sum advanced or invested because in fact, there was no transaction in terms of cash/money.

8. Having examined the impugned orders of the PCIT and the ITAT, and having considered the submissions of learned counsel for the Revenue, this Court is of the view that in the facts and circumstances of the case on hand,

the interpretation placed by the ITAT on Section 68 of the Act, its reasoning and conclusions in the impugned order are consistent with the legal position and cannot be said to be suffering from any legal infirmity.

9. No substantial question of law arises from the impugned order.

10. The appeal is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 26, 2019

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