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

+   ITA 108/2020

PRINCIPAL COMMISSIONER OF INCOME TAX, (CENTRAL)-3,

..... Appellant

Through: Ms.Vibhooti Malhotra, Senior Standing Counsel with Mr.Shailender Singh, Advocate.

versus

M/S TANEJA DEVELOPER & INFRASTRUCTURE PVT. LTD.

..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE SANJEEV NARULA

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

%   **18.02.2020**

<u>C.M. No. 6459/2020 (exemption)</u>

1. Exemption allowed, subject to all just exceptions.

2. The application stands disposed of.

<u>ITA 108/2020 & C.M. No. 6460/2020</u>

3. There is a delay of 142 days in filing the appeal. We have heard learned senior standing counsel for the Revenue on merits. Since we are not inclined to interfere in the present appeal, we do not deem it appropriate to pass any order on the application seeking condonation of delay.

4. The revenue is in appeal against the order dated 29.03.2019, passed by the ITAT, Delhi 'C' Bench in ITA No. 3952/DEL/2014 relating to Assessment Year (AY) 2005-06, wherein the Tribunal rejected the appeal preferred by the revenue. Addition of Rs. 20 crores was sought to be made against the assessee under Section 68 of the IT Act on account of credit received from M/s Rangoli Buildtech Pvt. Ltd. and M/s Epic Developers Pvt. Ltd. However, it transpired that no money has been received from M/s Rangoli Buildtech Pvt. Ltd. and only an amount of Rs.14.5 crores was received from M/s Epic Developers Pvt. Ltd. The Assessing Officer (AO) made the addition of the said amount of Rs.14.5 crores, received as loan from M/s Epic Developers Pvt. Ltd. on the premise that the credit worthiness of the creditor M/s Epic Developers Pvt. Ltd. has not been established. Since, it had filed return of income as '*Nil,*' and no business had been transacted by the said entity, it was held by the AO that the genuineness of the transaction had not been proved. The CIT (A) however reversed the findings in the following way:

> *"With regard to the above observation of the AO, I am of the considered view that creditworthiness and genuineness of the transaction is not solely dependent on the return of income filed even if it is for Rs. Nil. The courts have held, that if the profit making apparatus is not their, then in that event source of source has to verify so as to examine the genuineness of the loan transaction. Accordingly, the Balance Sheet of Epic Developers Pvt. Ltd. was perused and it is found that in the year under consideration they have been received a sum of Rs.17.35crores from following two entities, from which funds have been invested*

in the appellant's company:-

S.No.	*Name of Share Holders*	*Amount (Rs.)*	*Assessment Particulars*
1	*Benda Amtek ltd.*	*11,85,00,000*	*AABCB4094M*
2	*Amtek Auto Ltd.*	*5,50,00,000*	*AAFFA6185K*

From the perusal of the details of bank account and assessment particulars of both Benda Amtek Ltd. and Amtek Auto Ltd., it is found that Epic Developers Pvt. Ltd. is one of the group entities of Amtek Ltd. and in the year under consideration Benda Amtek Ltd. have a returned income of Rs.1,28,24,076 and that of Amtek Auto Ltd. is to the tune of Rs.10,93,50,330. Therefore, in view of the source of source having come from the creditworthy party, I am of the considered view that the AO cannot add a sum of Rs.14.50 crores on account of credit received from Epit Developers Pvt. Ltd. by holding the same as a non-genuine loan transaction. In view of these above facts and evidences on record, the addition of Rs.14.50 crores received from Epic Developers Pvt. Ltd. is considered to be unexplained and genuine transaction and hence the addition so made by the AO deserves to be deleted."

5. The ITAT has concurred with the said finding. From the above, it would be seen that the investor company, namely, M/s. Epic Developers Pvt. Ltd. was one of the group entities of Benda Amtek Ltd. and Amtek Auto Ltd. and both had substantial returned income in the year in question of Rs.1,28,24,076/- and Rs. 10,93,50,350/-. Therefore, there was no reason to doubt either the credit worthiness of the investor or the genuineness of the transaction. The aforesaid findings are purely factual in nature and do not raise any substantial question of law for consideration of this Court. We do not find any reason to interfere with the impugned order.

6. The appeal is accordingly dismissed.

VIPIN SANGHI, J

SANJEEV NARULA, J

FEBRUARY 18, 2020

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