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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decision delivered on:04.08.2023

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ITA 428/2023

M/S OM SHIVA TRADERS PVT. LTD.

..... Appellant

Through: Mr Rakesh Gupta with Mr Somil
Agarwal and Mr Anshul Mittal, Advs.

versus

INCOME TAX OFFICER WARD 13(4)

NEW DELHI, & ANR.

..... Respondents

Through: Mr Shailendra Singh, Sr. Standing
Counsel with Ms Dacchita Shahi, Mr
Viplav Acharya and Mr Akash
Saxena, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (ORAL):

CM No.39611/2023

1. Exemption allowed subject to just exceptions.

ITA 428/2023 & CM Nos.39610/2023

2. Issue notice.

3. Mr Shailendra Singh, learned senior standing counsel, accepts notice
on behalf of the respondents/revenue.

4. We have heard the counsels for the parties.

5. We are of the view that the appeal should be admitted.

6. It is ordered accordingly.

7. The following question of law is framed for consideration of this



Court:

(i) Whether the Tribunal misdirected itself in law in passing the impugned order, in view of the fact that it contains no reasons?

8. With the consent of the learned counsels for the parties, the writ petition is taken up for hearing and final disposal at this stage itself, based on the record presently made available to the Court.

9. This appeal concerns Assessment Year 2008-09.

10. *Via* this appeal, the appellant/assessee seeks to assail the order dated 01.03.2023 passed by the Income Tax Appellate Tribunal [in short, “The Act”].

11. A perusal of the impugned order shows that the respondent/revenue had preferred an appeal with the Tribunal, against the order of Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] dated 31.03.2011.

12. The issue that the CIT(A), and thereafter the Tribunal, dealt with was, whether the addition made by the Assessing Officer (AO) under Section 68 of the Income Tax Act, 1961 [in short, “The Act”], was sustainable.

13. The AO had added Rs. 3 crores, to the appellant/assessee’s income.

14. The record shows that this amount was apparently received by the appellant/assessee, in the form of share capital and share premium.

15. According to the appellant/assessee, Rs. 2 crores was invested by an entity going by the name, Bhawani Portfolio Pvt. Limited, while Rs. 1 crore was invested by another entity going by the name, Thar Steels Pvt. Limited.

16. It appears that Rs. 2.50 crores was invested towards share capital. The balance amount, i.e. Rs. 50 lakhs, was received in the form of share



premium.

17. According to the CIT(A), the appellant/assessee had satisfied the triple test, i.e., i.e., established the identity, genuineness and creditworthiness of the investors.

18. This conclusion was reversed by the Tribunal, with a direction to the AO to make a fresh enquiry.

19. A perusal of the order shows that the Tribunal has not provided any reason whatsoever, as to why it disagrees with the conclusion arrived at by the CIT(A).

20. The CIT(A) has rendered a reasoned decision.

21. Furthermore, the Tribunal has simply quoted in extenso, the assertions made by the appellant/assessee and extracted a portion of the CIT(A)'s order.

22. This aspect runs through the entire order.

23. The Tribunal, thereafter, in one paragraph, i.e paragraph 11, has simply stated the following, which according to us, is not satisfactory.

“Having heard arguments of both the parties and after going through the entire contents of the paper book and after perusing the facts on record, we do not find any strength in the ratio given by the ld. CIT(A), hence, owing to the absence of the pertinent facts, we deem it proper to remand the matter to file of the Assessing Officer to inquire into the issue afresh and pass a speaking order after affording due opportunity to the assessee”.

24. As would be evident on a perusal of the aforementioned paragraph, the reversal of the CIT(A)'s order has taken place, without the Tribunal discussing as to what part of the order was unsustainable.

25. Furthermore, a direction of remand has been issued, without



indicating to the AO what exactly he is required to examine afresh.

26. We are of the view that the Tribunal will have to deliberate on the matter afresh and articulate in the order its reasoning, if it chooses not to agree with the order of the CIT(A).

27. Consequently, the impugned order is set-aside.

28. Accordingly, the question of law is answered in favour of appellant/assessee, and against the respondent/revenue. The matter is remanded to the Tribunal for a *de novo* hearing.

29. The above-captioned appeal is disposed of, in the aforesaid terms.

29. Pending interlocutory application shall stand disposed of.

**RAJIV SHAKDHER
JUDGE**

**GIRISH KATHPALIA
JUDGE**

AUGUST 4, 2023/R.Y

Click here to check corrigendum, if any