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

\+ ITA 322/2024

THE PR. COMMISSIONER OF INCOME TAX 4 .....Appellant

Through: Mr. Shlok Chandra, SSC along with Ms. Madhavi Shukla, Ms. Priya Sarkar, JSCs and Mr. Sudarshan Roy, Adv.

versus

M/S MDLR AIRLINES PVT LTD .....Respondent

Through: Mr. Gautam Jain and Mr. Manish Yadav, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE RAVINDER DUDEJA

O R D E R

% **04.07.2024**

CM APPL. 36826/2024 (Ex.)

Allowed, subject to all just exceptions.

Application stands disposed of.

CM APPL. 36825/2024 (73 Days Delay in Refiling)

1. Bearing in the mind the disclosures made, the delay of 73 days in re-filing the appeal is condoned.

2. Application shall stand disposed of.

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3. The Principal Commissioner impugns the order of the Income Tax Appellate Tribunal ['**Tribunal**'] dated 19 October 2023 and poses the following questions of law for our consideration:-

"A. Whether the Hon'ble ITAT erred in facts and circumstances in deleting the addition of Rs. 4,30,78,000/- made on account of share application money u/d. 68 of the Act without confirming the genuineness of the transaction with supporting evidence.

B. Whether the Hon'ble ITAT erred in facts and circumstances in deleting the addition of Rs. 3,99,18,595/- made on account of disallowance of expenditure and ignoring the fact that no business activity has been carried out during the year under consideration.

C. Whether the Hon'ble ITAT erred in facts and circumstances in deleting the addition of Rs. 3,99,18,595/- made on account of disallowance of expenditure without appreciating the fact that the assessee has itself suspended the operations in the year 2009 itself and never commenced the same. "

4. We note that insofar as the dispute with respect to share application money is concerned, the Tribunal has, in paragraph 7 of the impugned order, observed thus:-

"7. We have carefully gone through the rival submissions made by both the parties. Admittedly, it is a fact on record that ld. AO is common to both, the assessee as well as the share applicant i.e. Sri Gopal Kumar Goyal, who have been assessed for the same AY 2012-13 u/s. 143(3), share applicant vide order dated 25.03.2015 and assessee vide order dated 31.03.2015. The sole basis for making the addition by the Ld. AO as noted in the impugned assessment order is that assessee did not furnish bank statement of the share applicant. However, Ld. Counsel has evidently demonstrated from various submissions which have been duly acknowledged by the seal of the office of the Ld. AO that all the necessary and relevant evidences were placed before the Ld. AO. All these documents have been placed before us also, forming part of the paper book.

7.1 We have gone through the assessment order passed in the case of share applicant, Shri Gopal Kumar Goyal, perusal of the same reveals that Ld. AO has accepted the submissions and claims made by him in his return. We also take note of the fact that the share applicant has made investments, both in the preceding as well as succeeding years, details of which has already been tabulated above. Thus, it is not a sole transaction with the assessee in this year only. We do find force in the submission made by the Ld. Counsel and have no reason to interfere with the findings given by the Ld. CIT(A) in deleting the addition of Rs.4,30,78,000/- While holding so, we draw force from the decision of Hon'ble jurisdictional High Court of Delhi in the case of Satkar Infrastructure Pvt. Ltd. (supra). Accordingly, ground no. 1, taken by the revenue in this respect is dismissed. "

5. We also take note of the pertinent observations which appear under Heading B of the findings of the order of the Commissioner of Income Tax (Appeals) [‘**CIT(A)**’] and where while dealing with the aforesaid issue, the CIT(A) had held as follows:-

> “Grounds 3 to 3.1
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> i. I have considered the facts of the case, the basis of addition made by the AO and the arguments of the AR during the assessment proceedings. On going through the details, it is noticed that share application money of Rs. 4,30,78,005/- has been raised from Gopal Goyal, director and existing shareholder.
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> ii. The appellant filed copies of return of income, order of assessment, audited financial statement, bank statement, and confirmation ledger accounts. It was also contended that share application money has been received in previous years and succeeding years, as stated hereunder:

Sr. No.	Assessment Year	Opening Balance	Receipt During the Year (Rs.)	Repayment During the Year (Rs.)	Closing Balance (Rs.)	Addition made if any (Rs.)	Assessment of appellant Company u/s	Assessment of sh. Gopal Kr. Goyal u/s
1	2011-12	--	14,53,60,000	--	14,53,60,000	Nil	147 r.w.s.148	147 r.w.s.148
2	2012-13	14,53,60,000	4,36,78,000	6,00,000	18,84,38,000	4,30,78,000	143(3)	143(3)
3	2013-14	18,84,38,000	--	--	18,84,38,000	Nil	143(3)	143(3)
4	2014-15	18,84,38,000	2,60,00,000	2,24,13,000	19,20,25,000	Nil	143(3)	143(3)
5	2015-16	19,20,25,000	--	19,20,25,000		Nil	143(3)	143(3)

> iii. It is seen that the AO has doubted the genuineness of impugned transaction on the ground that bank statement has not been submitted. The appellant company, on its part to discharge onus u/s 68 has filed complete details including confirmation and identity particulars. It is also to be appreciated that Gopal Goyal has been assessed by the same Assessing Officer as that of the appellant company. The income of Sh. Gopal Kumar Goyal for AY 2012-13 has been determined at Rs. 20,24,940/- by the AO.

iv. The issue, whether addition under such circumstances could be made in the hands of the appellant company has been clearly decided by the Hon'ble Jurisdictional High Court in the case of CIT v. Varandavan Farms (P) Ltd. ITA No. 71/2015 wherein it has been clearly held that if the identity and other details of the share applicants are available, the share application money cannot be treated as undisclosed income, in the hands of the company. The addition, if at all should be in the hands of the applicants if their creditworthiness cannot be proved. Relevant para of the judgment is extracted below:

> "3. The ITAT has in the impugned order noticed that in the present case the Revenue has not doubted the identity of the share applicants. The sole basis for the Revenue to doubt their creditworthiness was the low income as reflected in their Income Tax Returns. The entire details of the share applicants were made available to the AO by the Assessee. This included their PAN numbers, confirmations, their bank statements, their balance sheets and profit and loss accounts and the certificates of incorporation etc. It was observed by the ITAT that the AO had not undertaken any investigation of the veracity of the above documents submitted to him. It has been rightly commented by the ITAT that without doubting the documents, the AO completed the assessment only on the presumption that low return of income was sufficient to doubt the credit worthiness of the share holders."

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viii. It is pertinent to refer to the judgment of Hon'ble Delhi High Court in the case of CIT v. Well Worth Construction Udyog Ltd. ITA No. 443/2014 dated 25.2.2015 covers the case of the appellant on the facts. Relevant para of the judgment is extracted below:

> "So, is the case of M/s. Richie Rich Overseas (Pvt.) Ltd. where also there are substantial sale and purchase running into several crores. A perusal of expenses claimed, refute the observation of the 10 that they were merely statutory expenses. The bank statement showed transfer entries in Mahan Enterprises Ltd. by way of cash deposit, and debit by issue of cheques to the concerns ITA 443/2014 Page 2 for routing the money. The A0, therefore, treated the credits as unexplained and made addition of Rs. 1.65 crores.
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> The AO has not discussed any documentary evidences in the assessment order/Remand Report except giving the particulars of bank transactions of Mahan Enterprises Ltd. and so called intermediaries. The balance sheet of the creditors shows that they had sufficient funds. In case of M/s. Goyal Textiles Pvt. Ltd. the balance sheet shows paid up capital of Rs. 5.00 crores.

> The funds have been given as loans & advances. In case of M/s. Ankur Distributors Pvt. Ltd. as well as in case of M/s. Richi Rich Overseas Pvt. Ltd. the paid up share capital is of Rs. 5.00 crores each."
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> "In the instant case no evidence has been brought on record by the 40 to prove that the share application money emanated from the coffers of the applicant. The AO has not made any enquiries from the concerned parties nor did he examine the assessment records of the share applicants. "
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> ix. In any case, the AO has the jurisdiction over the case of Sh. Gopal Goyal the investor in this case, hence if there is any infirmity in this regard, the AO may examine the feasibility of taxability of such funds in the hands of the investor, subject to the factum of it being permissible within law. Having regard to the above, the addition of Rs. 4,30,78,000/- is deleted. Grounds 3 to 3.1 are allowed. ”

6. Insofar as the question of disallowance of expenses is concerned, we fail to discern any substantial question of law that may arise therefrom.

7. The appeal consequently fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

JULY 04, 2024/RW