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

\+ ITA 859/2019

PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) -2, NEW DELHI ..... Appellant

Through: Mr. Kunal Sharma, Sr.SC with Ms. Zehra Khan, Adv.

versus

M/S MAHESH WOODS PRODUCTS PVT. LTD. ..... Respondent

Through: Mr. Salil Kapoor, Mr. Sumit Lalchandani, Mr. Amandeep Mehta, Ms. Ananya Kapoor and Mr. Tarun Chanana, Advs.

14

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PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL -2, NEW DELHI ..... Appellant

Through: Mr. Kunal Sharma, Sr.SC with Ms. Zehra Khan, Adv.

versus

M/S MAHESH WOODS PRODUCTS PVT. LTD. ..... Respondent

Through: Mr. Salil Kapoor, Mr. Sumit Lalchandani, Mr. Amandeep Mehta, Ms. Ananya Kapoor and Mr. Tarun Chanana, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

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

% **03.04.2024**

1. The Revenue challenges the order of the Income Tax Appellate Tribunal ["**ITAT**"] dated 21 February 2019 and has proposed the following questions of law for our consideration:

> "A. That the Hon'ble ITAT has erred in law in holding that the additional evidence submitted during the appellate stage as admissible by completely ignoring the fact the Respondent never furnished the documents during the assessment stage without any reasons.
>
> B. Whether on facts of the case and also the prevailing law Hon'ble Tribunal has erred by allowing deletion of the additions made on account of accommodation entry of unsecured loans amounting to Rs. 70,00,000/- clearly ignoring the fact that the assessee has failed to establish the identity, creditworthiness and genuineness of the transactions?
>
> C. That the Hon'ble Tribunal has failed to appreciate that the companies which have contributed huge unsecured loans had no creditworthiness to advance such huge money?
>
> D. Whether the Hon'ble Tribunal is correct in deleting the additions made on difference between BAHI and income disclosed in the return amounting to Rs. 18,87,931/-?
>
> E. Whether the Hon'ble Tribunal is correct in deleting the addition made on account of being the difference between income admitted by the Respondent in his statement recorded at the time of search under Section 132(4) and the income disclosed in the return amounting to Rs. 8,37,62,069/- ignoring the statement under Section 132(4) on the Act made by the Respondent voluntarily in surrendering of additional undisclosed income of Rs. 10 crore when confronted with incriminating documents?
>
> F. That the Hon'ble Tribunal has erred in law in allowing the Respondent to retract his statement which was duly given under Section 132(4) of the Act and clearly an admissible document and which was not a bald statement but based on the incriminating documents seized.
>
> G. Whether in law and in facts of the case the Order of the Ld. Tribunal is erroneous and not tenable in law?"

2. We note that while dealing with the issue, the ITAT has, in paragraphs 5 and 5.1 of the impugned order, held as follows:

"5. We have heard both the parties and perused the records, Paper Book filed by the assessee; submissions of both the parties, case laws relied upon from both sides and especially the impugned order. We find that the addition in dispute is based on two facts i.e. first inability of the assessee to produce the Directors of the applicant companies, and second on account of absence of the applicant companies at the given addresses. We note that the case of the assessee is that it was provided with adequate opportunity to establish the transactions and it was not confronted with even the Inspector's report stating that he said companies were not found. From the facts of the case, it appears that the assessee was required to establish the transactions and to produce the Directors/Principal Officers of those companies vide order-sheet entry dated 30.11.2011. Subsequently, summons were directly issued by the revenue to the share applicant companies on 16.12.2011 for compliance on 21.12.2011 and physical verification was also carried out by the revenue through the Inspector. Thus, the entire process of verification of share capital and framing of the assessment was completed in a period of last month before the proceeding was barred by limitation on 31.12.2011. Since the notice u/s 153A of the Act initiating the scrutiny proceeding was issued much earlier on 13.04.2010, the inescapable conclusion that can be reached is that the assessment was completed in a hurried manner, and therefore the defence of the assessee that it was not provided adequate opportunity appears correct. Further, we do not find from the record that the assessee was ever confronted with the Inspector's report based on which the adverse view was finally taken by the revenue. The revenue has also not commented on the replies received by post. Principles of natural justice are applicable to tax proceedings and, therefore, non-supply of the Inspector's report and failure to comment on the replies received from the parties adversely affected the right of the assessee to be heard. In these circumstances, the assessee cannot be prevented from adducing evidence in its favour. The revenue has also not rebutted or assailed the evidence filed. Therefore, Ld. CIT(A) has rightly admitted the additional evidences produced by the assessee under Rule 46A of the IT Rules. We further note from the evidence filed that the share applications were received through banking channel. All share applicant companies are duly assessed to tax and are existing companies with annual returns filed under the Companies Act also. The summons / notices issued by the revenue had been duly served on these parties, and their failure to respond to the summons merely cast the onus on the assessee to establish the transactions. The assessee filed copies of share application forms received from the share applicant companies, bank statements evidencing the receipt of share application money, and PAN details of the applicant companies. Thus, the primary onus stood discharged by the assessee. Therefore, it cannot be concluded that these parties are non-existent or that the share application money received was bogus. There is nothing on record to suggest that the finding of the revenue that the share applicant companies could not be found at the given addresses, was confronted to the assessee. The issue of share premium raised by the revenue in the assessment order to doubt the genuineness of share capital raised also cannot be held against the assessee as the assessee was never required to explain or Justify this matter. No evidence was found in the search to establish that the share capital raised was not genuine. Hence, we note that the case laws cited by the Ld. DR are on distinguished facts, therefore, are not applicable. However, our aforesaid view is fortified by the judgment of Hon'ble Supreme Court in the case of Lovely Exports 216 CTR 195 (SC) wherein, it was held as under:-

> *"2. Can the amount of share money be regarded as undisclosed income under section 68 of IT Act, 1961? We find no merit in this Special Leave Petition for the simple reason that if the share application money is received by the assessee company from alleged bogus shareholders, whose names are given to the AO, then the Department is free to proceed to reopen their individual assessments in accordance with law. Hence, we find no infirmity with the impugned judgment."*

5.1 Keeping in view of the facts and circumstances of the case as explained above and respectfully following the aforesaid precedent, we are of the view that the addition made by the AO was not legally sustainable and therefore, the same was rightly deleted by the Ld. CIT(A), which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) on the issue in dispute and reject the ground no. 1 raised by the assessee."

3. In view of the aforesaid conclusions as recorded, we find no substantial question of law which can be said to arise.

4. Consequently, these appeals shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

APRIL 03, 2024/p