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

\+ ITA 210/2020

PR. COMMISSIONER OF INCOME TAX .....Appellant

Through: Mr. Sanjeev Menon, Jr. Standing Counsel for Mr. Zoheb Hossain, Sr. Standing Counsel.

versus

G.D.FOODS MANUFACTURING (INDIA) PVT. LTD .....Respondent

Through: Mr. Ajay Wadhwa, Ms. Ragini Handa & Mr. Ujjwal Jain, Advocates.

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

**O R D E R**

% **08.07.2024**

**CM APPL. 31845/2020 (328 Days Delay in Refiling)**

1. Bearing in mind, the office report dated 04 July 2024 which certifies the appeal to have been filed within the prescribed period of limitation, the delay in refiling stands condoned.

**ITA 210/2020**

1. The appellants have proposed the following questions of law:-

> "A) Whether the Ld. ITAT is justified in law and on facts in restricting the addition of Rs. 4,96,44,574/- on account of bogus purchases and Rs. 48,68,267/- on account of unaccounted scrap sale to 8% of the bogus purchases and unaccounted scrap sales ignoring the judgement of the Hon'ble Supreme Court in the case of N.K. Proteins Limited vs. DCIT (250 Taxman 22) holding that addition in the case of bogus purchases could not be restricted to certain percentage when the entire transaction was found bogus?
> B) Whether the Ld. ITAT is justified in law and on facts in confirming the order of Ld. CIT(A) in deleting the addition of Rs.

29,79,37,366/- made by the AO on account of profit earned by the assessee on undisclosed sales which was arrived at by the AO on the basis of matching of data retrieved from seized sever and undisclosed sales?
C) Whether, in the fact and circumstances of the case the Ld. ITAT was justified in law and on facts in deleting the addition of Rs. 53,00,000/- on account of unexplained share capital u/s 68 on account of shares allotted in the name of employee which was held to be not a genuine transaction?"

2. Insofar as proposed questions A and B are concerned, they are liable to be answered against the appellants, bearing in mind the judgment rendered by the Court on 08 April 2024 in ITA No. 188/2020.

3. Insofar as the last aspect comprised in question C pertaining to the share application money received from the employee concerned, we note that the Income Tax Appellate Tribunal ["**Tribunal**"] ultimately and upon taking the relevant facts into consideration has observed as follows:-

> "The learned departmental representative has only grievance that the learned CIT(A) could not show about the genuineness of the transaction. In this present case, there is an increase in the salary which has been allowed by the ld Assessing Officer as deduction under section 37 (1) of the Act. It was also not stated by the learned assessing officer that the salary so excess paid is related to the subscription of the shares by the employee. Further the share certificates found by the revenue at the time of search, were in the name of the employee only. Further it is also not denied by the shareholder that there is a personal loan obtained by him though alleged by the help of company of ₹3,000,000/- from one and Rs. 15,00,000/- from another bank. As the assessee has received the share application money/share subscription money from the person whose sources are known, the share certificates are in the name of that person, there is no evidence that such staff held shares for the benefit of the assessee company, the salary so paid by the assessee to the employee it is not found excessive but allowed in toto, all these facts shows that the assessee has Shown Identity, Creditworthiness and Genuineness of the Transaction of Share Subscription of ₹5,300,000/-. In View of this we do not find any infirmity in the order of the Learned CIT(A) in deleting the addition under Section 68 of the Act of the above sum. In the

Result Ground No. 2 of the Appeal of the Revenue Is Dismissed."

4. Bearing in mind the aforesaid conclusions arrived at by the Tribunal, we fail to discern any substantial question that may be said to arise. We, consequently, dismiss the instant appeal.

**YASHWANT VARMA, J.**

**RAVINDER DUDEJA, J.**

**JULY 8, 2024/***sk/k*