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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ITA 257/2024**
PRINCIPAL COMMISSIONER OF INCOME TAX-10 DELHI

..... Appellant

Through: Mr. Abhishek Maratha, SSC
with Ms. Nupur Sharma, Mr.
Parth Semwal, Mr. Apoorv
Aggarwal, Advs.

versus

AL NASIR AGRO FOODS

..... Respondent

Through: None.

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

ORDER
06.05.2024

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CM APPL. 26308/2024

1. Bearing in mind the disclosures made, the delay of 154 days in re-filing the appeal is condoned.
2. The application shall stand disposed of.

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3. The Principal Commissioner impugns the order of the Income Tax Appellate Tribunal ["ITAT"] dated 23 May 2023 and has proposed the following questions of law for our consideration:-

"(1) Whether on the facts and circumstances of the case the Hon'ble ITAT was justified in confirming the decision of CIT(A) without giving its independent findings on merits and just agreeing with the finding of the Ld. CIT(A)?

(2) Whether on the facts and circumstances of the case the Hon'ble ITAT was justified in confirming the decision of the CIT(A)



without considering the fact that the assessee failed to discharge its primary onus of proving the genuineness of purchases made from Sundry Creditors in absence of complete Address/PAN details of these persons shown as Sundry Creditors?

(3) Whether on the facts and circumstances of the case the Hon'ble ITAT was justified in agreeing with the decision of the CIT(A) that the books of accounts of the assessee were audited and no specific defects in books was pointed out without considering that for making addition for bogus sundry creditors u/s 68 of the Income-tax Act, 1961 no such conditions are mandatory?

(4) Whether the impugned order passed by Hon'ble ITAT is perverse both on facts and in law?"

4. The issue itself pertains to the applicability of Section 40A(3) of the Income Tax Act, 1961, as well as the additions made under Section 68 relating to payments made to sundry creditors.

5. The ITAT has taken into consideration the undisputed fact that the Assessing Officer had not rejected the books of account of the assessee. We, however, find that this issue is clearly rendered academic bearing in mind the following findings which came to be recorded by the Commissioner of Income Tax(Appeals) ["CIT(A)"] and which have not been disturbed by the ITAT:-

"It was explained to the Assessing Officer that all the suppliers have been paid their outstanding dues in the m/o April & May 2013 and there are no dues outstanding as on date of these suppliers. The Assessing Officer has not pointed out any discrepancy in relation to payments made to these suppliers in the asstt. completed for the AY 2013-14 u/s 143(3) of the Income Tax Act. Copies of the Audited Profit & Loss Account & Balance Sheet as on 31.03.2013 alongwith copy of the Asstt. order for the A.Y. 2013-14 passed u/s 143(3) of the Income Tax Act is enclosed at Annexure-4. In the asstt. order for the A.Y. 2013-14 at page-2, the Assessing Officer while elaborating modus operandi of the purchase of meat & payment to meat suppliers by the appellant has categorically agreed with the explanation of the appellant that due to peculiar nature of business of the appellant the production of meat creditors is sometimes not practicable. In view of the facts explained above there is no dispute as regards purchases and the trading results. Hence the findings given by the Assessing Officer



that the Sundry Creditors are bogus is not correct. The addition made by the Assessing Officer of Rs.4,95,25,264/- to the total Income on a/c of non verifiability of the outstanding creditors is not justified and it is liable to be deleted. The Honorable ITAT in the case of ITO vs ZAZSONS Exports Ltd (LKO) also supports their view.”

6. In view of the aforesaid factual findings, we find that the appeal raises no substantial question of law. The appeal consequently fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 06, 2024/neha