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

\+ ITA 1398/2018

PR. COMMISSIONER OF INCOME TAX (CENTRAL) -2 ..... Appellant

Through: Mr. Sanjeev Menon, Adv.

versus

M/S SHYAM INDUS POWER SOLUTIONS PVT. LTD. ..... Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Rohit Jain, Mr. Aniket Agrawal, Mr. Samarth Chaudhary, Advs.

23

\+ ITA 1399/2018

PR. COMMISSIONER OF INCOME TAX (CENTRAL) -2 ..... Appellant

Through: Mr. Sanjeev Menon, Adv.

versus

M/S. SHYAM INDUS POWER SOLUTIONS PVT. LTD. ..... Respondent

Through: Mr. Ajay Vohra, Sr. Adv. with Mr. Rohit Jain, Mr. Aniket Agrawal, Mr. Samarth Chaudhary, Advs.

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

O R D E R

% **20.03.2024**

1. Although the instant appeals had been kept back for further consideration, we, however, note that the Assessing Officer [“**AO**”] had made the following pertinent observations:-

"8. One of the allegations against the Aryan Sainik Group (i.e. assessee's company group) was that it has routed its unaccounted money earned from suppressing/under reporting the profits, into the business, in the form of share application money issued at high premium through the various Kolkata based companies and the same has been brought into various companies of the group.

Further, from the investigation/enquiry conducted by the Investigation Wing, it has been proved that the assessee group companies has received money through various Kolkata based companies and which in term have got money through another set of Kolkata based companies, whose business activities are suspicious and the entire circulation of money is through those companies which are indulging in entry operation and no business activities at all.

Moreover, the details in respect of share application money /share premium/ unsecured loans received from the various Kolkata based companies have also been retrieved from the seized documents/hard disk seized/impounded during the search and seizure operation.

From the perusal of P&L A/e for the FY 2009-10, it was observed that an amount of Rs.45,26,69,907/- was shown as unsecured loan as on 31.03.2010 from various persons. Further, it is observed that out of this amount Rs.33,81,00,000/- has been taken as unsecured loan during the FY 2009-10.

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Further, from the details asked from the assessee it has come to notice that all the above noted companies are Kolkata based companies. Subsequently, from the perusal of the P&L Alc/balance sheet for the FY 2010-11 (A Y 2011- 12) of the assessee company, it has also been observed that the assessee company converted the entire unsecured loan amount received from these Kolkata based companies into share application money through journal entry, in AY 2011-12 and the details of the same was filed on 09.03.2015

xxxx xxxx xxxx

Thus, from the above it is amply clear that the assessee company first brought the above noted amount of Rs.33.81 Cr into unsecured loan and after that the same was converted into share application money however the reasons for such-conversion have not been spelt out."

2. However, and undisputedly, both the unsecured loan as well as

share application loan were duly reflected and recorded in the books of accounts of the respondent assessee. The AO, appears to have sought a revision in changed circumstances bearing in mind the report of the Investigation Wing. That report was clearly not material gathered in the course of the search.

3. In that view of the matter, we are of the considered opinion that these appeals would be governed by the decision rendered in **Principal Commissioner of Income Tax, Central-3 vs. Abhisar Buildwell P. Ltd.** [(2024) 2 SCC 433]**.** This more so since the two Assessment Years in question namely, 2009-10 and 2010-11 were not abated.

4. Insofar as the proposed questions (a) and (b) are concerned, we take note of the submission of Mr. Vohra, learned senior counsel appearing for the respondent who apprises us that no deductions were claimed with respect to the VAT penalty. In any case and since the assumption of jurisdiction itself is found to be faulted, nothing further need be observed.

5. Consequently, the appeal fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MARCH 20, 2024/*neha*