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

\+ ITA 431/2022

PR. COMMISSIONER OF INCOME TAX-7 .....Appellant

Through: Mr Sanjeev Menon, JSC.

versus

M/S R.N. KHEMKA ENTERPRISES .....Respondent

Through: Mr Sumit Lalchandani, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE TEJAS KARIA

ORDER

% **01.04.2025**

CM APPL. 29615/2024

1. This is an application filed by the respondent [**Assessee**] seeking to raise cross-objections in the above-captioned appeal preferred by the Revenue.

2. The learned counsel for the Assessee fairly states that the application is not maintainable in view of the decision of the coordinate bench of this court in ***Pr. Commissioner of Income Tax (Central)-2 v. Nagar Dairy Pvt. Ltd.: 2025:DHC:1350-DB.***

3. The application is accordingly dismissed.

ITA 431/2022, CM APPL. 29616/2024 & CM APPL. 4277/2025

4. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [**the Act**] impugning a common order dated 09.08.2019 passed by the learned Income Tax Appellate Tribunal [**ITAT**]

insofar as it relates to ITA No.6016 of 2018 pertaining to Assessment Year [**AY**] 2007-08. The assessee had preferred the said appeal, *inter alia,* impugning an order passed by the Commissioner of Income Tax (Appeals) **[CIT(A)]** upholding the addition of ₹3,34,31,000/- under Section 68 of the Act.

5. The Assessee's assessment for the relevant AY 2007-08 was reopened pursuant to a search conducted at the office of Sh Surender Kumar Jain and Sh Virender Jain on 14.09.2010. It was alleged that various incriminating material and documents were seized during the course of the search and it was found that the said persons were engaged in providing accommodation entries by issuing cheques (pay orders in lieu of cash) to a large number of beneficiary companies.

6. It was alleged that the Assessee had availed of accommodation entries from various intermediary companies.

7. The Assessee had challenged the addition essentially on two grounds. First was regarding the reopening of the assessment as it was claimed that the same was not based on any tangible material; and second that the transactions in respect of the companies were justified.

8. The learned ITAT took up the Assessee's appeal along with several other appeals and had found that the companies from whom the Assessee is alleged to have availed of accommodation entries, were genuine and existing. In view of the said conclusion, the learned ITAT set aside the addition made by the AO. It is the Revenue's case that the addition made in the relevant assessment year [AY 2007-08] has been set aside on the basis of a finding pertaining to existence of the companies with whom the Assessee had transactions in the other assessment years. The learned ITAT has

allowed the Assessee's appeal by following its decision in respect of other assessment years without examining whether the companies with whom the petitioner has had transactions in the financial year [FY] 2006-07 were genuine.

9. In the aforesaid context, this court had admitted the present appeal and framed the following question of law:

> "4. We accordingly admit the instant appeal on the following question of law: -
>
> A. Whether on the facts and circumstances of the case, the Tribunal has erred in deleting the addition of INR 3,34,31,000/- made by the AO under Section 68 of the Act as unexplained cash credits without appreciating that the capacity or creditworthiness of the investor has not been established?"

10. The learned counsel appearing for the Revenue has handed over a tabular statement to indicate that apart from three companies, which had extended credit to the assessee in FY 2005-06 relevant to AY 2006 – 07, all other companies in respect of which the transactions in FY 2006-07, were found to be non-genuine by the AO are different. A tabular statement setting out list of companies, which were considered by the learned ITAT in the context of additions made in AY 2006-07 and the additions made in AY 2007-08 are set out below:

Companies from which credit was received in AY 2006 – 07 (Pg. 119)	**Companies from which credit was received in AY 2007-08 (Pg. 150) (Where there is overlap with AY 2006-07, name of company mentioned in the same row; Where sum has been received from a certain company in AY 2006-07, but**	**Amount received in the previous year relevant to AY 2007-08 (in Rs.)**

	not in 2007-08, the relevant row has been left blank)	
Pelicon Finance & Lease Ltd.	-	-
Vogue Leasing & Finance Pvt. Ltd.	Vogue Leasing & Finance Pvt. Ltd.	18,00,000/-
Finage Lease & Finance India Ltd.	Finage Lease & Finance India Ltd.	17,00,000/-
Karishmn Industries Ltd.	-	-
SR Cable Ltd.	SR Cable Pvt. Ltd.	15,00,000/-
	Timely Fincap Pvt. Ltd.	5,00,000/-
	Graph Financial Services Ltd.	38,00,000/-
	Hillridge Investment Ltd.	1,33,00,000/-
	Sunny Cast & Forge Ltd.	30,00,000/-
	Singal Securities Pvt. Ltd.	30,00,000/-
	Pitambra Securities Pvt. Ltd.	10,00,000/-
	Brite Indu Resources Ltd.	15,00,000/-
	Parshudh Finance Co. Pvt. Ltd.	20,00,000/-

11. It is apparent from the above that a finding as to the genuineness of the companies from whom the assessee had availed credit in the FY 2005 – 06 relevant to AY 2006-07 cannot be a foundation for a finding that the companies from whom the assessee had availed the credit in FY 2006 – 07 relevant to AY 2007 – 08 are genuine. The learned ITAT has not examined the capacity or the creditworthiness of eight companies which were not subject matter of examination in the proceedings relating to the earlier assessment years [AY 2006 – 07].

12. Accordingly, the present appeal is allowed and the impugned order to the extent that it relates to AY 2007 – 08 is set aside. The matter is

remanded to the learned ITAT to consider afresh. Pending applications shall also stand disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 01, 2025/tr

Click here to check corrigendum, if any