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

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Date of Decision: 15.04.2025+ **ITA 281/2024 & CM No. 28758/2024****PUSHPA SALUJA**

.....Appellant

Through: Mr Kanishk Rana, Advocate.

Versus

ITO, WARD 45(4), NEW DELHI

.....Respondent

Through: Mr Puneet Rai, SSC, Mr Ashvini
Kumar and Mr Rishabh Nangia, SCs
and Mr Nikhil Jain, Advocate.**CORAM:****HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE TEJAS KARIA****VIBHU BAKHRU, J.**

1. The Assessee has filed the present appeal under Section 260A of the Income Tax Act, 1961 [Act] impugning an order dated 21.09.2023 [impugned order] passed by the learned Income Tax Appellate Tribunal [ITAT] in ITA No.1491/Del/2022 captioned *Pushpa Saluja v. Income Tax Officer* in respect of assessment year [AY] 2014-15. The Assessee has projected the following questions for consideration of this court:

- “(i) Whether the Ld. ITAT erred in upholding the wrongful application of Section 68 of the Income Tax Act, 1961 on alleged bogus purchases?
- (ii) Whether the Ld. ITAT erred in upholding addition of entire amount of the alleged bogus purchases to the income of the Appellant, instead of only gross profit margin embedded in the purchases?



(iii) Whether the Impugned Order passed by the Ld. ITAT is perverse?”

2. The Assessee had filed her return of income for AY 2014-15 on 03.11.2014 declaring an income of ₹15,75,420/-. The Assessee's return was selected for scrutiny and the AO issued notices under Section 143(2) of the Act as well as under Section 142(1) of the Act. The assessment proceedings culminated in an assessment order dated 28.12.2016 whereby the AO assessed the Assessee's total income at ₹71,29,800/-. The AO made an addition of ₹55,54,382/- concluding that increase in the sundry creditors, as reflected in the balance sheet, to the extent of ₹55,54,377/- was on account of bogus purchases. The tabular statement indicating the sundry creditors and the amounts outstanding which were considered as bogus is set out below:

“S.No.	Sundry Creditors (A.Y. 2014-15)	Amount
1	Ambey Fabric	3,99,750
2.	Dawar Exclusive	2,17,706
3.	Meenu Fashions	29,56,358
4.	Unique Creations	19,80,563

3. The AO issued summons under Section 131 of the Act to the aforementioned sundry creditors with a direction to confirm the outstanding balance. However, none appeared pursuant to the said summons. The assessment order also notes that the summons issued to M/s Ambey Fabric and M/s Dawar Exclusive returned with the remarks “No such person / No such address / Incomplete Address”. Whilst, the proprietor of M/s Dawar Exclusive, Mr. Ritesh Kukreja, denied any business transactions with the Assessee; the proprietors of M/s Ambey Fabric, M/s Meenu Fashions and



M/s Unique Creations expressed their inability to attend the proceedings prior to 26.12.2016. In the aforesaid context, the AO added the entire amount reflected against the said creditors as bogus purchases.

4. The Assessee appealed the said assessment order before the Commissioner of Income Tax (Appeals) [CIT(A)]. The Assessee contested the addition made on the ground that she had supplied all particulars including suppliers address, Permanent Account Numbers, balance confirmation as well as suppliers copy of the income tax return during the assessment proceedings. She also claimed that she was not provided sufficient time by the AO for ensuring compliance of the summons issued under Section 131 of the Act and the additions were made only on the ground that they had not personally appeared before the AO.

5. The learned CIT(A) found that the AO had made additions under Section 68 of the Act and proceeded to examine the provisions of Section 68 of the Act. After referring to various decisions, the learned CIT(A) confirmed the additions made by the AO by an order dated 23.09.2019.

6. The Assessee appealed the order dated 23.09.2019 of learned CIT(A) before the learned ITAT. However, the same was rejected by the impugned order.

7. The Assessee contended that learned CIT(A) had grossly erred in proceeding on the basis that the additions had been made under Section 68 of the Act as the Assessee had produced the details of the creditors, their PANs as well as copies of their income tax returns. She claimed that there was no dispute as to the identity of the sundry creditors or their creditworthiness. More importantly, the Assessee also contested the



additions on the ground that there is no dispute that the Assessee had made purchases as the revenue from sales was accounted for determining the income chargeable to tax. The Assessee contended that even if the AO entertained any doubts as to the identity of the vendors from whom the Assessee had purchased the goods, the fact that goods had been purchased could not be doubted. The Assessee contended that at best the AO could have taxed the estimated profits arising from the said purchases but it was impermissible to make addition of the entire expenditure on account of purchases. The Assessee also relied on the decision of the Gujarat High Court in the case of *Commissioner of Income Tax v. Simit P. Sheth: (2013) 356 ITR 451*.

8. Additionally, the Assessee also relied on the decision of the Bombay High Court in *CIT v. Nikunj Eximp Enterprises Pvt. Ltd.: (2015) 372 ITR 619 (Bom)* in support of her contention that an addition could not be made merely because the supplier had not appeared before the AO.

9. The learned counsel appearing for the Assessee contended that none of the contentions advanced were considered by the learned ITAT.

10. Mr. Puneet Rai, the learned counsel appearing for the Revenue contended that the AO had not made any addition under Section 68 of the Act. He contended that the additions were made on the basis that the amounts reflected as purchases, were not wholly and exclusively for the purpose of the business. He contended that the AO had disallowed the expenses reflected in the books of accounts as not wholly or exclusively for the purposes of earning income and not under the provisions of Section 68 of the Act. He stated that although the CIT(A) has erroneously referred to



Section 68 of the Act as the assessment order does not mention that the disallowance/addition was under the said section.

11. As noted above, the Assessee's appeal was rejected by the learned CIT(A) on the basis that the additions were made by the AO under Section 68 of the Act. However, the assessment order does not mention that the additions have been made under the said Section. Further, Mr. Rai also earnestly contended that the AO had not made additions under Section 68 of the Act. It is material to note that this was one of the contentions advanced by the Assessee before the learned ITAT but the same was not considered. Further as noted above, it was Assessee's case that since its sales as recorded in the books of accounts was accepted, some allowance was necessary to be made on account of purchases even if the AO was of the view that the suppliers in question had not supplied goods. Plainly, this contention was neither examined by the learned CIT(A) nor learned ITAT.

12. After some arguments, the learned counsel appearing for the parties submits that it would be apposite to remand the matter to learned ITAT to consider the contentions as advanced by the Assessee.

13. In view of the above, we set aside the impugned order and remand the matter to learned ITAT to consider afresh. The learned ITAT will examine whether the additions were made under Section 68 of the Act as held by the learned CIT(A) and if so whether the same are sustainable. The learned ITAT shall also consider the question whether any allowance is required to be made for purchases in the event it is held that the sundry creditors as reflected by the Assessee in the books, had not supplied the goods on credit.

14. We clarify that we have not expressed any opinion on the merits of



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the controversy and all rights and contentions of the parties are reserved.

15. The petition is disposed of in the above terms. The pending application is also disposed of.

VIBHU BAKHRU, J

TEJAS KARIA, J

APRIL 15, 2025

‘gsr’

Click here to check corrigendum, if any