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

+ ITA 429/2024

PRINCIPAL COMMISSIONER OF INCOME TAX 1.....Appellant

Through: Mr. Vipul Agarwal, Adv.

Versus

M/S ASM PIPES PRIVATE LIMITED (EARLIER KNOWN AS
MAR FASHIONS PVT. LTD.)Respondent

Through: Mr. Ved Jain, Mr. Nischay Kantoor &
Ms. Soniya Dodeja, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE TEJAS KARIA

ORDER

% **06.05.2025**

CM Nos.45868/2024 & 45869/2024 (for condonation of delay in filing & refilling the appeal)

1. For the reasons stated in the applications, the same are allowed. The delay in filing & refilling the appeal is condoned.
2. The applications are disposed of.

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3. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 [Act] impugning an order dated 25.11.2022 passed by the Income Tax Appellate Tribunal [ITAT] in ITA No.9897/Del/2019 and C.O. No.23/Del/2020 in respect of Assessment Year [AY] 2011-12.

4. The respondent [Assessee] filed its return of income for AY 2011-12 declaring a loss of ₹34,796/-. The Assessee's return for the relevant assessment year was reopened by issuance of a notice under Section 148 of the Act. The said proceedings culminated in an Assessment Order dated 29.10.2018 whereby the Assessing Officer [AO] determined the Assessee's income chargeable to tax at ₹1,57,75,204/-. The said increase in the assessed

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of the Act. The AO noted that during the relevant assessment year, share application money received by the Assessee from certain shareholders, which belonged to the said group – SMC Group – had been forfeited. According to the AO, the transaction was not genuine and the Assessee had, under the guise of forfeiting the share application money, routed the undisclosed funds introduced as share application money from entities of the same group.

5. The Assessee appealed the said decision before the Commissioner of Income Tax (Appeals)-1, New Delhi [CIT(A)]. The Assessee challenged the assessment order on merits as well as on jurisdiction of the AO to frame the assessment. The Assessee's challenge to the jurisdiction of the AO rested on the fact that notice under Section 148 of the Act pursuant to which reassessment proceedings had been reinitiated was issued in the name of Mar Fashions Pvt. Ltd., which had since merged with the Assessee [M/s ASM Pipes Pvt. Ltd.] pursuant to an order passed by this court sanctioning the scheme of amalgamation under Sections 391-394 of the Companies Act, 1956.

6. Insofar as Assessee's challenge on merits is concerned, the Assessee contested the findings of the AO on the ground that the company [M/s Charles India Pvt. Ltd.] which had paid the share application money that was forfeited, was not a bogus company or one that lacked commercial substance.

7. The CIT(A) did not address the Assessee's challenge to the jurisdiction of the AO to pass the assessment order in respect of the Assessee pursuant to reassessment proceedings initiated by a notice issued under Section 148 of the Act in the name of another company that had ceased to exist. The CIT(A) was of the view that it was not necessary to address the aforesaid issue as the addition made was not sustainable on merits. The CIT(A) held that no

addition under Section 68 of the Act could be made in the returned income of



the previous year relevant to AY 2010-12 as no amount was received during the said period. The CIT(A) found that there was no ground or legal basis for treating M/s Charles India Pvt. Ltd. – the entity that had paid the share application money which was forfeited by the Assessee – is a bogus company. The CIT(A) also noted that in the appellate proceedings arising from the assessment relating to M/s Charles India Pvt. Ltd., the CIT(A) had deleted the addition made on account of disallowance of loss on forfeiture of shares by the Assessee. The CIT(A) thus held that the addition made under Section 68 of the Act was unsustainable and accordingly set aside the assessment order.

8. The Revenue filed an appeal before the learned ITAT. It is relevant to refer to the principal ground as urged before the learned ITAT. The same is set out below:

“2. The substantive grounds of appeal raised by the Revenue are as under: -

Whether on the facts and circumstances of the case, the Id. CIT(A) has erred in deleting the addition of Rs.1,58,10,000/- made by the Assessing Officer on account of forfeiture of share application money received by the assessee from the company which was controlled and managed by the same group which controls the assessee and transactions were controlled transactions to shift the profit from assessee company to the other group companies.”

9. It is apparent from the above that it is not the case of the Revenue that the addition was made on the ground of accommodation entry in the previous year relevant to AY 2011-12. The case now set up by the Revenue was that the Assessee had shifted its profits from one group entity to the other. The shift in the stand is relevant for the reasons that the tax effect in the present case is below the threshold, as stipulated in the Central Board of Direct Taxes

[CBDT] Circular dated 17.09.2024 and the learned counsel for Revenue seeks

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to rely on exception made out for matters relating to accommodation entries.

10. In view of the above, the present appeal is required to be disposed of on the ground of low tax effect as concededly, the tax effect in the present appeal is ₹52,51,687/-.

11. Having stated the above, we also find that no substantial question of law arises in the present appeal. The learned ITAT has found that the assessment order was required to be set aside on the ground that no notice has been issued in favour of the Assessee and the proceedings that culminated in the assessment order were commenced pursuant to a notice issued to an entity that did not exist at the material time. The said question is also covered by various decisions of the Supreme Court as well as decision of this court including ***PCIT v. Maruti Suzuki India Ltd.: Neutral Citation No.: 2015:DHC:10110-DB.***

12. In view of the above, the present appeal is dismissed both on the ground of low tax effect as well as on the ground that no substantial question of law arises for consideration of this court.

VIBHU BAKHRU, J

TEJAS KARIA, J

MAY 06, 2025

‘gsr’

[Click here to check corrigendum, if any](#)