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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 21.01.2025

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ITA 10/2025 & CM APPL. 3693-95/2025**QUARTZ COMMECIAL PVT LTD**

.....Appellant

Through: Mr Bhupesh Narula, Ms Rinku Narula, Ms Poonam Nagpal, Mr Anugrah Ekka and Mr Kanishk Taneja, Advocates.

versus

INCOME TAX OFFICER WARD 20(3)

.....Respondent

Through: Mr Sunil Aggarwal, SSC, Mr Shivansh B Pandya, Mr Viplav Acharya, JSCs and Mr Utkarsh Tiwari, Advocate.

CORAM:**HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****VIBHU BAKHRU, ACJ. (ORAL)**

1. The appellant (hereafter *the Assessee*) has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*), *inter alia*, praying as under: -

“a) Allow the present Appeal under Section 260A of the Income Tax Act 1961, for setting aside the Order dated 13/02/2014 of AO, in view of Order dated 09/02/2018 and 31/03/2022 passed by this Hon'ble High Court;

b) And or alternately, remand back the same for fresh decision in accordance with law laid down by the Hon'ble Courts, in the interest of natural justice and the grounds in the present appeal may please be



considered by the Assessing Officer for AY 2007-08, and in view of the Judgment passed by this Hon'ble Court in PR. Commissioner of Income Tax (Central) Vs M/S Forum Sales Pvt. Ltd. in ITA 862/2019 And ITA 863/2019, decided on 1/03/2024;”

2. The Assessee is aggrieved by the information received pursuant to application under Right to Information Act, 2015, whereby the Assessee became aware that the Assessing Officer (AO) had not resumed proceedings in respect of AY 2007-08. According to the Assessee, the AO was required to examine the Assessee's books and decide afresh. The said assumption is premised on the basis that this court had remanded the matter to the AO by an order dated 9.02.2018 in ITA No.155/2018 captioned *Quartz Commercial Private Limited v. Income Tax Officer* in respect of AY 2007-08. The Revenue disputes that the matter was remanded to the AO in terms of the aforesaid order dated 09.02.2018. According to the Revenue the said order dismissed the Assesses appeal.

3. After some arguments, it is clear that the Assessee seeks to impugn an order dated 31.07.2017 (hereafter *the impugned order*) passed by the learned Income Tax Appellate Tribunal (hereafter *the ITAT*) in ITA No.381/Del/2017 in respect of the Assessment Year (AY) 2007-08 captioned *Quartz Commercial P. Ltd. v. ITO*. In terms of the said order, the Assessee's Appeal (No.64/2016-17 for AY 2007-08) filed against the order dated 07.11.2016 passed by the Commissioner of Income Tax (Appeals) [hereafter *the CIT(A)*] under Section 250(6) of the Act, was dismissed.

4. The Assessee had appealed the said impugned order dated 31.07.2017 passed by the learned ITAT under Section 260A of the Act before this court



in ITA No.155/2018 captioned *Quartz Commercial Private Limited v. Income Tax Officer*. The said appeal was dismissed by an order dated 09.02.2018. This court held that since all the authorities had given concurrent finding, no question of law arose.

5. Thereafter, the Assessee again approached the Assessing Officer (AO) on the assumption that the matter had been remanded to the AO for consideration. However, a plain reading of the order dated 09.02.2018 indicates that this court had not remanded the matter to the AO. This court merely noted the passage from the order passed by the learned ITAT in the first round of proceedings, being an order dated 01.03.2013 passed by the learned ITAT in ITA No. 1405/Del/2011, whereby the AO was directed to examine the Assessee's books of account and give a finding thereon. However, there is no ambiguity in the operative part of the said order dated 09.02.2018. The said order is reproduced below:

“The assessee's appeal under Section 260-A of the Income Tax Act, 1961 complains that the lower authorities concurrently fell into error in not noticing that the amounts brought to tax (₹7,87,000) was entirely based on surmise and conjecture.

The AO in this case rejected the finding that the assessee had routed the share application money to the tune of ₹15,70,00,000/- within certain group companies the same day. The assessee received share application money with share application premium of ₹390 per share of M/s. Platinum Agency Pvt. Ltd. as well as M/s. Radium Consultancy Pvt. Ltd., and from the third entity, i.e. M/s. Laurels Properties Pvt. Ltd., but on 28.03.2007. These were shown as invested share money, in those very companies on behalf of the foreign entities. The amounts too were received on rotational basis. This business model adopted by the assessee was brought to tax by application of



commission of 0.5% on the total turnover during the year, resulting in an addition of ₹7,87,000/-

The CIT(A) upheld the AO's finding ; the ITAT concurrently held as follows:-

“7.2 We have carefully considered the submissions and perused the records. We find that in this case a show cause notice was given to the assessee. We find that the Assessing Officer has asked the assessee to furnish the reply with supporting documentary evidence and also complete books of accounts along with complete bills and vouchers and also bank statements in support of the assessee's claim. However, thereafter in the assessment order there is no mention about the aforesaid requisition made by the Assessing Officer. Under the circumstances, we find that it remains to be verified whether the assessee has maintained proper books of accounts or not. Hence, the submissions of the assessee that the additions were not warranted as the assessee has maintained proper books of accounts, needs to be verified. In our considered opinion, the interest of justice will be served, if the matter is remitted to the file of the Assessing Officer. The Assessing Officer is directed to examine the assessee's books of accounts and give a finding thereon.”

We have heard the counsels and also considered the submissions. We are of the opinion that since all the authorities have concurrently given the finding, no question of law arises. Therefore the appeal is dismissed.

[emphasis added]

6. Paragraph no. 7.2 of the learned ITAT's order as extracted by this court in its order dated 09.02.2018 is an extract from an order dated 01.03.2013 passed by the learned ITAT in ITA No.1405/Del/2011 – the first round of proceedings – and not the learned ITAT's order which was impugned in ITA No. 155/2018.



7. The Assessee had filed its return of income for AY 2007-08 on 14.11.2007 declaring a loss of ₹2,064/-. The said return was picked up for scrutiny and the proceedings culminated in an assessment order dated 30.12.2009 whereby the AO made an addition of ₹7,87,000/-. The said addition was based on the conclusion that the Assessee was an accommodation entry provider and had received commission in cash, which the AO had assessed to be 0.5% of the turnover.

8. The Assessee appealed the said decision before the learned CIT(A). However, the same was rejected by an order dated 29.12.2010. The Assessee appealed the decision of the learned CIT(A) dismissing its appeal before the learned ITAT (being ITA No.1405/Del/2011), which was disposed of by an order dated 01.03.2013 remanding the matter to the AO *“to examine the assessee’s books of accounts and give a finding thereon”*.

9. Pursuant to the said order passed by the learned ITAT, the AO had directed the Assessee to produce the books of account and had duly examined the same. The AO after examining the books of account, once again confirmed the addition of ₹7,87,000/- by an assessment order dated 13.02.2014.

10. The Assessee appealed the assessment order dated 13.02.2014 before the learned CIT(A). And, the learned CIT(A) had confirmed the decision of the AO in terms of the order dated 07.11.2016 in Appeal No.64/2016-17. The Assessee appealed the said decision of the learned CIT(A) before the learned ITAT. The learned ITAT dismissed the said appeal (ITA No.381/Del/2017) by an order dated 31.07.2017.



11. As noted above, the Assessee's appeal against the said decision was dismissed by this court by an order dated 09.02.2018. As noted above, this court had held that in view of the concurrent findings, no question of law arose. However, it appears that an incorrect passage from the decision of the learned ITAT was recorded in the order dated 09.02.2018 passed by this court in in ITA No.155/2018. Instead of recording the passage from the impugned order dated 31.07.2017 passed by the learned ITAT, an extract from the order dated 01.03.2013 passed by the learned ITAT, which was also reproduced in the learned ITAT's order dated 31.07.2017 (which was impugned in the said appeal) was erroneously reproduced by this court in its order.

12. The relevant extract of the impugned order dated 31.07.2017 is set out below: -

“4. In appeal the Ld. CIT(A) upheld the disallowance made by the A.O. On further appeal by the assessee the Tribunal restored the matter to the file of the A.O. with a direction to examine assessee's books of accounts and give a finding thereof by observing as under.

“7. We have heard the rival contentions and perused the records. We find that the Ld. Counsel for the assessee submitted that assessee has maintained proper books of accounts, no discrepancy has been found by the Assessing Officer and no addition has been made except for this addition. Ld. Counsel of the assessee further submitted that there is no provision for notional income in the Income Tax Act. He further submitted that there was no evidence of assessee being involved in any accommodation entry business. Hence, ld. Counsel of the assessee has argued that the addition should be deleted.



7.1 On the other hand, Ld. Department Representative submitted that there is no evidence that books of accounts were accepted by the Assessing Officer. He submitted that the shares have been transacted of the face value of Rs.10/- at Rs. 190/-. He pleaded that the order of the authorities below in this case needs to be accepted.

7.2 We have carefully considered the submissions and perused the records. We find that in this case a show cause notice was given to the assessee. We find that the Assessing Officer has asked the assessee to furnish the reply with supporting documentary evidence and also complete books of accounts along with complete bills, vouchers and also bank statements in, support of the assessee's claim. However, thereafter in the assessment order there is no mention about the aforesaid requisition made by the Assessing Officer. Under the circumstances we find that it remains to be verified whether the assessee has maintained proper books of accounts or not. Hence, The submissions of the assessee that the additions were not warranted as the assessee has maintained proper books of accounts, needs to be verified. In our considered opinion, the interest of justice will be served, if the matter is remitted to the file of the Assessing Officer. The Assessing Officer is directed to examine the assessee's books of accounts and give a finding thereon.

8. In the result, the appeal filed by the assessee stands allowed for statistical purposes."

5. Subsequently the A.O. asked the assessee to produce books of accounts which were produced and duly examined by the A.O. The A.O. noted that the assessee did not have any operational income and expenses debited as ROC fee, audit fee etc. which were claimed as loss. The bank accounts maintained with Karnataka Bank Ltd revealed that after 1.4.2006 there were entries in respect of share application money on 21.3.2007 which was immediately transferred to another company as share application money. He observed that there is increase in share capital of Rs.39,25,000/- besides share premium of Rs.15,30,75,000/- (being Rs.390 per share). Treating this as a



sham transaction as discussed in the original assessment order the A.O. observed that the assessee is engaged in providing accommodation entries to various group companies. He was of the opinion that the assessee is charging commission for arranging such bogus share transactions and commission is charged between 0.5% to 2%. To be most conservative 0.5% of the total entries operated by the assessee was taken by the A.O. as income for the year. Accordingly, the A.O. made an addition of Rs.7,85,000/-.

6. In appeal the Ld. CIT(A) confirmed the addition made by the A.O. by observing as under :

“I have considered all facts and circumstances of the case. As has been mentioned by the A.O. in his order dt. 13.2.2014, it is a fact that the Hon'ble ITAT had set aside the case to the file of A.O. to examine the books of accounts maintained by the appellant. I am to give a finding thereon. In his order u/s 143(3)/254 dated 13.2.2014 the A.O. has mentioned categorically that books were produced and were examined. It is further mentioned by the A. O. that the perusal of the bank account which is also part of the books of accounts maintained by the appellant. It is noted that the receipt and transfer of share application money on the same date i.e. 21.03.2007. The A. O. stated that there increase in share capital of Rs.39,25,000/- and share premium of Rs.15,30,25,000/-. All these information was gathered by the A. O. from the examination of books of accounts of the appellant which included bank accounts. Thereafter the A. O. has brought to tax only 0.5% of the commission which comes to Rs.7,85,000/-. To my mind, the A.O. has given his findings on the basis of examination of books of accounts and to that extent the appellant should not have any grievance. The action of the A. O. is confirmed.”

7. Aggrieved with such order of the Ld. CIT(A) the assessee is in appeal before us.

8. The learned counsel for the assessee referring to the copies of the assessment order in case of M/s Laurels Properties (P) Ltd.



and M/s Radium Consultancy Services (P) Ltd. which are passed u/s 143(3) submitted that huge share premium was also accepted in those cases.

8.1. Referring to the decision of Hon'ble Calcutta High Court in the case of CIT vs. M/s Data ware Pvt. Ltd. judgement dated 21st September, 2011, he submitted that the Hon'ble High Court in the said the decision has upheld the order of the Tribunal wherein the Tribunal has allowed the appeal of the assessee by deleting the addition made by the A.O. under section 68 of the Act on account of unexplained cash credit being bogus share capital. He accordingly submitted that the addition sustained by the Ld. CIT(A) should be deleted.

9. The Ld.DR on the other hand heavily relied on the order of the Ld. CTT(A). He submitted that the assessee is an accommodation entry provider. The assessee does not have any business and it has received share application with the huge premium and invested the same again in share application money. This is nothing but the work of an entry provider. Therefore, the LD. CIT(A) was fully justified in sustaining the addition made by the A.O.

10. I have considered rival arguments made by both the sides, perused the orders of the Ld. CIT(A) and the A.O. and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. As mentioned earlier the assessee has not carried on any business activities during the year and has received share application money with a huge premium which has been invested again on the same date as share application money in various companies. This otherwise indicates that the assessee is doing only the business of entry operations. Therefore, the Ld. CIT(A) in my opinion is fully justified in bringing to tax the commission which is prevalent in this type of business. The decision of Hon'ble Supreme Court in the case of Sumati Dayal vs. CIT reported in 214 ITR 80 1 and CIT vs. Durga Prasad More reported in 82 ITR 540 fully supports the case of the Revenue. In this view of the matter and in view of the detailed discussion by the CIT(A) on this issue, I do not find any infirmity in of Rs.7,85,000/- made by the A.O. Accordingly, I uphold the same. The grounds raised by the assessee are accordingly dismissed.”



13. It is apparent from the above that both, the learned CIT(A) and the learned ITAT had concurrently upheld the decision made by the AO. In view of these concurrent findings, this court had dismissed the Assessee's appeal holding that no question of law arises.

14. Since, the Assessee's appeal against the impugned order dated 31.07.2017 passed by the learned ITAT was dismissed, the question of any further proceedings before the AO did not arise. The issue sought to be raised in this appeal stood concluded with the dismissal of the appellant's appeal (in ITA No.155/2018 captioned *Quartz Commercial Private Limited v. Income Tax Officer*) by the order dated 9.02.2018 passed by this court.

15. In view of the above, the present appeal is misconceived. The same is, accordingly, dismissed. All pending applications are also disposed of.

VIBHU BAKHRU, ACJ

TUSHAR RAO GEDELA, J

JANUARY 21, 2025

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Click here to check corrigendum, if any