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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 778/2015

PR. CIT

..... Appellant

Through: Mr N.P. Sahni, Senior Standing Counsel
with Mr Nitin Gulati, Junior Standing Counsel.

versus

RAKAM MONEY MATTERS PVT LTD.

..... Respondent

Through: Mr Pranjal Srivastava, Advocates.

CORAM:

DR. JUSTICE S.MURALIDHAR

MR. JUSTICE VIBHU BAKHRU

ORDER

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13.10.2015

CM 22575/2015

1. For the reasons stated in the application, the delay of 149 days in re-filing the appeal is condoned.
2. The application stands disposed of.

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3. This is an appeal by the Revenue against the order dated 16th October, 2014 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 2821/DEL/2011 for Assessment Year ('AY') 2003-04.
4. The question sought to be urged before the Court by the Revenue is whether the ITAT was correct in law in affirming the order of the

Commissioner of Income Tax (Appeals) [‘CIT (A)’] deleting the addition in the sum of Rs.60,00,000/- made by the Assessing Officer (‘AO’) to the income of the Assessee under Section 68 of the Act pertaining to share application/capital money received by the Assessee.

5. The Assessee filed its return of income for AY 2003-04 on 02nd December, 2003 declaring an income of Rs. 5,64,556/-. It appears that pursuant to information received from the Director of Income Tax (Investigation) a notice under Section 148 of the Income Tax Act was issued to the Assessee on 19th March, 2010 for reopening the assessment. On the question of the validity of the reopening of the assessment, the matter travelled up to the ITAT and was finally remanded to the AO for dealing with the proposed additions on merits.

6. Before the AO, the Assessee filed the details of the eight corporate entities which had made payments by account payee cheques of various sums of money towards subscription of shares of the Assessee. The Assessee also produced the income tax returns, PAN numbers, copies of bank statements of the aforementioned companies, affidavits by way of confirmation on behalf of the said companies confirming that the payments towards share application money were made, copies of details in the Registrar of Companies showing the status of the companies as ‘active’, copies of the balance sheets, certificates of incorporation, articles of association and the share application forms of the respective companies.

7. The AO issued notices to the Directors of the aforementioned companies but none of them appeared. The AO was of the view that the fact that the

money had been received through banking channels was not in itself sufficient to prove the genuineness of the creditors or their creditworthiness. The AO noted that the balance in the respective bank accounts of the companies demonstrated a common pattern where the balance would be very low up to a certain date and then substantial amounts were deposited either by cash or cheque to increase the balance and thereafter invariably withdrawn within a day or two. Since the process was shown to be repeated over and over in the P&L Account of the Assessee, the AO concluded that there was no business activity worthy of mention. Concluding that the Assessee had failed to discharge the onus to prove the genuineness or the creditworthiness of the companies which had made the payments, the AO held that the share application money received from the companies should be treated as income in the hands of the Assessee. He accordingly ordered an addition of Rs.60 lakhs.

8. The CIT(A) has in the order dated 18th March, 2011 observed that the AO has not referred to any material to disprove the extensive documents produced by the Assessee. The Assessee was also not confronted with the report of the DIT (Investigation). The statements made in the course of that investigation were also not provided to the Assessee. In those circumstances, the CIT (A) found that the addition proposed by the AO was not justified.

9. In the impugned order, the ITAT concurred with the finding of the CIT (A) on facts. The ITAT noted that the main basis for making of the addition by the AO was the information received from the DIT (Investigation). The process of examination of the Directors by issue of summons was "not taken

to the logical end as after the failure of the directors to attend in response to the summons issued to them no further steps were taken". The ITAT also observed that AO could have cross verified the status of these companies with the respective AOs of those companies. The statements of the third parties recorded during the course of investigation were not put to the Assessee for cross-examination and no opportunity was given to the Assessee for confrontation of the said persons.

10. Mr N.P. Sahni, learned Senior Standing Counsel for the Revenue, did not dispute the fact that the report of the DIT (Investigation) or that the statements recorded during the course of the investigation were not put to the Assessee. He placed reliance on the decision of this Court dated 28th November, 2013 in ITA No. 341/2012 (*CIT v. MAF Academy P. Ltd.*) the decision dated 7th January, 2013 in ITA No. 120/2012 (*CIT v. Nipun Builders & Developers Pvt. Ltd.*) and the decision dated 31st January, 2011 in ITA No. 2093/2010 (*CIT v. Oasis Hospitalities (Pvt.) Ltd.*). He urged that the CIT (A) had not discussed several findings of the AO which showed that the Assessee had not discharged the onus of proving the genuineness or the creditworthiness of the so-called investors.

11. The Court is essentially called upon to consider whether on the facts of the present case, the view taken by CIT(A) as confirmed by the ITAT could be said to be plausible or is it so perverse as to require interference by the Court?

12. A perusal of the order of the AO shows that its foundation is the report of the DIT (Investigation). Admittedly, the Assessee was not confronted

with that material in the course of the reassessment proceedings. The Assessee was also not confronted with the statements recorded in the course of the investigation. Once that material is kept aside then the scope of enquiry can only be whether the Assessee has produced documents to discharge the initial onus of proving the genuineness and creditworthiness of the companies who were stated to have subscribed to the Assessee's shares.

13. It is not in dispute that extensive material was produced by the Assessee in the present case to prove the identity, genuineness and creditworthiness of the companies who had subscribed to its shares. Among the materials produced were the Income Tax Returns and the PAN card details of the eight companies. Even if the Directors of these companies did not respond to the summons issued by the AO, it was not impossible for the AO to make proper enquiries to ascertain the genuineness of these entities and satisfy himself of their creditworthiness. As pointed out by the CIT(A), the AO failed to make any effort in that direction. He did not take to the logical end the half-hearted attempt at getting the Directors to appear before him. He did not even seek the assistance of the AOs of the concerned companies whose ITRs and PAN card copies had been produced.

14. The view taken by the CIT(A) that the AO failed to come up with the material to disprove what had been produced by the Assessee is certainly a plausible view in the facts and circumstances of the case. Likewise, the view taken by the ITAT concurring with the CIT(A) on facts cannot be said to be perverse.

15. The decisions cited by Mr Sahni turn on their own facts. As far as the

broad principles governing the law under Section 68 of the Act is concerned, the Court is satisfied that the order of the CIT(A) as confirmed by the ITAT suffers from no legal infirmity. No substantial question of law arises.

16. The appeal is dismissed.

S.MURALIDHAR, J

VIBHU BAKHRU, J

OCTOBER 13, 2015

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