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

+ ITA 129/2022, C.M.Nos.20129/22 & 20130/2022

THE PR. COMMISSIONER OF INCOME TAX -2- AGRA

..... Appellant

Through: Mr.Ruchir Bhatia, Advocate

versus

MADHUR MITTAL

..... Respondent

Through:

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Date of Decision: 27th April, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. The present appeal has been filed challenging the order dated 10.01.2019 passed by Income Tax Appellate Tribunal (ITAT), Bench "E" New Delhi in ITA No.6126/DEL/2014 and Co No.165/DEL/2015 in ITA No.6126/DEL/2014 for Assessment Year 2008-09.
2. The appellant has stated that the assessee has filed return of income for assessment year 2008-09 declaring an income of Rs.2,82,271/- under Section 139 (1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act')
3. On 28.09.2010, search and seizure operation under Section 132 of the Act was carried out in Triveni Group and a search warrant under Section 132 (1) of the Act was issued and executed in the name of the

assessee as well. The assessee belongs to the Triveni Group. A notice under Section 153A of the Act was also issued to the assessee.

4. Pursuant to the notices issued under Section 142 (1) of the Act to the assessee on 12.09.2012 and 26.09.2012, the assessee filed return of income for the concerned year declaring an income of Rs.7,26,490/-.
5. The Assessing Officer found cash amounting to Rs.5,05,90,000/- credited in assessee's bank account bearing no.049010100313087 in Axis Bank Limited. The cash flow statement filed by the assessee was not accepted by the Assessing Officer except to the extent of Rs.4,00,000/- and this sum was allowed by the AO being withdrawal made by the assessee on 19.09.2007. The assessing officer added a sum of Rs.5,01,90,000/- as unexplained cash in the income of the assessee under Section 68 of the Act.
6. In regard to the another addition of Rs.5,01,90,000/-, the CIT (A) transmitted the documents submitted by the assessee to the Assessing officer called upon him to submit the report. However, the Assessing officer did not respond. CIT (A) in order to ascertain the authenticity of the return of income, identity and creditworthiness of each of the partners addressed a letter to the Directorate of Income Tax (Systems) and obtained a report. The CIT (A) partly allowed the appeal of the assessee on the issue of addition of Rs.5,01,90,000/- . The CIT (A) has held that the source of credit to the extent of Rs.43,62,500/- comprising of sums received from Mittal Tin container (Rs.41,00,000/-) and Vivek Commodities (Rs.2,62,500/-) was confirmed and the source of balance of Rs.4,58,27,500/- was considered to have been explained.

7. The revenue preferred an appeal before the ITAT against the order of the CIT (A). The ITAT confirmed the order of the CIT (A) and the appeal of the department was dismissed.
8. The department in the present appeal has only challenged the order of ITAT deleting the addition of Rs.4,63,18,300/- (on account of unexplained cash credit and income from undisclosed sources).
9. The department has challenged the order of the ITAT on the ground that the Tribunal has failed to appreciate that the assessee had deposited Rs.5,01,90,000/- in cash on different dates in his bank account maintained with Axis Bank. The assessee submitted his cash flow wherein it was noticed that the money has been received from M/s Triveni Infrastructure Development Company Ltd. (TIDCO), M/s Triveni Motors, M/s Vivek Commodities and Ms.Mittal Infrastructure Tin Containers Ltd. However, the assessee did not give any evidence to substantiate such receipt and therefore the same was rightly treated as unexplained credit in terms of Section 68 of the Act. The appellant stated that the assessee did not produce enough material to prove the genuineness of the transactions. It was stated that the assessee was under a legal obligation to prove the receipt of money to the satisfaction of the Assessing officer.
10. The department has also assailed the finding of the ITAT on the ground that a blind reliance on the Cash Flow Statement and Report of DIT (System) has wrongly been made and the same has to be corroborated by the other substantial evidence.
11. Mr.Ruchir Bhatia, learned senior counsel appearing for the appellant has stated that the order of the ITAT is liable to be set aside as it

miserably failed to appreciate that the assessee had been disbelieved by the Assessing officer after establishing infirmity or fallacy in the documents produced by him.

12. Mr.Bhatia has submitted that the assessee could not produce any formal corroborative evidence of having received respective amounts to corroborate the cash flow statement. Mr.Bhatia further stated that ITAT has wrongly relied upon the cash flow statement and report of DIT (systems).
13. It has further been stated that the CIT (A) could not have partaken the role of the Assessing officer and satisfy itself regarding the genuineness and creditworthiness of the parties. Mr.Bhatia has further stated that the ITAT has also failed to appreciate the real intent of Section 68 of the Act.
14. We have considered the submissions of Mr.Ruchir Bhatia.
15. The scope of jurisdiction in Section 260A is very well settled. It is a settled proposition that ITAT is the final arbiter of the facts. High Court can interfere in the order of the ITAT only if there is substantial question of law or there is manifest illegality or it suffers from perversity. The general rule is that High Court should be slow in interfering into the findings of ITAT, unless it suffers from any of the grounds mentioned hereinabove.
16. It is pertinent to mention here that the tribunal had also dismissed the cross objections of the assessee in regard to confirmation of certain addition made by the CIT (A). It is a matter of record that the assessee had not challenged the dismissal of the cross objections.

17. The ITAT in his impugned order has examined the issue raised by the appellant thread bear.
18. The tribunal had gone into the findings of the Assessing Officer and the CIT (A). The ITAT has dealt with the challenge of the department in regard to the issue raised as follows:

9. Now coming to the addition u/S 68 of the Act, learned AO recorded that in the bank account of the assessee, an amount of Rs.5,05,90,000/- was found credited and that the assessee had filed the cash flow statement for the year under consideration and also for earlier years, Since no proof in support of various cash receipts was filed, such cash flow statements remain self serving document and no reliance could be placed. On this premise, learned AO proceeded to make the addition.

10. In appellant proceedings, learned CIT (A) looked into the contentions of the assessee and also found that besides the opening cash in hand, the assessee received Rs.2.05 crores from M/s Vivek Commodities, Rs.2.65 crores from M/s Mittal Tin Container Industry, Rs.1,30,500/- from M/s Triveni Infrastructure Development Company Ltd. (TIDCO) and Rs.75 lacs from M/s Triveni Motors. Out of the four entities, the assessee is the promoter director of TIDCO and Triveni Motors, which entities are assessed by the very same AO having PAN AACCT3870A and AACFT0256B. Further, learned CIT (A) on a perusal of the financial accounts of TIDCO and Triveni Motors noticed that the TIDCO had shareholders fund of Rs.46.57 crores and loan funds to the tune of Rs.47.04 crore and Triveni Motors had a capital of Rs.2.89 crores and loan funds of Rs.5.35 crores. He, therefore, held that the identity, creditworthiness and genuineness of M/s TIDCO and M/s Triveni Motors is above any suspicion.

11. In respect of the other two entities, namely, M/s Vivek Commodities and M/s Mittal Infrastructure Tin Containers Ltd., learned CIT (A) perused the copies of the income-tax return, balance sheet and profit and loss account, confirmation of accounts etc. It was submitted before the learned CIT (A) that the amounts from these two entities were received on account of pledging some of the shares of TIDCO, which were owned by the assessee pursuant to the share

purchase agreement entered with those entities in view of the fact that the TIDCO was likely to come up with an IPO at a price band higher than the 20% of the present value agreed upon. Basing on this, learned CIT (A) accepted the genuineness of the transaction with these two entities.

12. Besides this, learned CIT (A) had taken pains to scrutinize the income-tax returns and profit and loss account of these two entities, namely, M/s Vivek Commodities and M/s Mittal Infrastructure Tin Containers Ltd. and found that both the partnership firms had shown nil income and there has been no activity worthwhile undertaken by them to show any profit earning apparatus. He further found that M/s Vivek Commodities with 17 partners and the capital of Rs.2.625 crores raised during the relevant previous year out of which they have paid a sum of Rs.2.05 crores to the assessee for purchasing the shares of TIDCO. Similarly, M/s Mittal Infrastructure Tin Containers Ltd. with 20 partners raised a capital of Rs.2.64 crores during the year and paid a sum of Rs.2.65 crores to the assessee for purchase of shares. On this, learned CIT (A) directed the assessee to prove the identity and creditworthiness of all the partners of these entities, in response to which the assessee submitted copies of return of income, computation sheet and balance sheet for each of the partners. Since these documents were submitted before the learned CIT (A) and were not available before the learned AO, learned CIT (A) transmitted the documents to the learned AO calling upon him to submit the report. Learned CIT (A) recorded that in spite of three reminders, there was no response from the learned AO. In those circumstances, learned CIT (A) in order to ascertain the authenticity of the return of income, identity and creditworthiness of each of the partners addressed a letter to the Directorate of Income Tax (systems) and obtained the report. On analysis of the return and documents, learned CIT (A) found that out of the 17 partners of M/s Vivek Commodities, the creditworthiness of one Harveer Singh was doubtful, as such the learned CIT (A) confirmed his contribution to an extent of Rs.2,62,500/-

13. Similarly, out of 20 partners of M/s Mittal Infrastructure Tin Containers Ltd, learned CIT (A) found the creditworthiness of three partners doubtful, namely, Gopal Dass Mangal, Sunder Gupta and one Rajni Mangal, who contributed a sum of Rs.41 lacs, as such, this

amount was confirmed by the learned CIT (A) while deleting the rest of the amount.

19. The perusal of the abovesaid would indicate that the tribunal has minutely examined the case and marshaled the facts well. It may be noted that the ITAT is final arbiter of the facts and appeal can be entertained by the High court only if there is a substantial question of law.
20. We consider that there is no substantial question of law in the present case. We also do not find any perversity in the order passed by the tribunal.
21. The appeal is accordingly, dismissed.

DINESH KUMAR SHARMA, J

MANMOHAN, J

APRIL 27, 2022/rb