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

+ ITA 386/2022 & CM APPLs.43641-43642/2022

PR. COMMISSIONER OF INCOME TAX-7 Appellant

Through: Mr. Puneet Rai and Ms. Adeeba
Mujahid, Advocates for Revenue

versus

SATKAR INFRASTRUCTURE (P) LTD. Respondent

Through: None

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Date of Decision: 10th October, 2022

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMOHAN, J (Oral):

1. Present Income Tax Appeal has been filed challenging the order dated 25th November, 2021 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 1198/Del./2017 for the Assessment Year 2012-13.
2. Learned counsel for the Appellant states that the ITAT has erred in deleting the additions of Rs.10,15,00,000/- which was made by the Assessing Officer under Section 68 of the Income Tax Act, 1961 (for short 'Act') on account of unexplained share premium and share capital since the essential ingredients of Section 68 such as identity & credit worthiness of the shareholders and genuineness of the transaction were not established by the Assessee.
3. He further states that the ITAT has erred in deleting the additions of Rs.10,15,00,000/- made by the Assessing Officer under Section 68 of the



Act, while ignoring the fact that during the assessment proceedings the Assessee had failed to produce controlling persons of share applicant companies along with supportive documentary evidence for examination and field enquiries in respect of share applicant companies revealed that such companies never existed on given addresses.

4. He states that the ITAT has also erred in holding that since this is the first year of operation of the Assessee it can't be said that the Assessee has brought its unaccounted funds through these investor companies as bogus share capital or share premium. He further contends that the ITAT has ignored the fact that in its first year there could have been no valid reason for the said investors to pay such high amount of premiums.

5. However, a perusal of the paper book reveals that both the appellate authorities below have recorded concurrent findings of facts that as many as eight out of nineteen investor companies were assessed under Section 143(3) of the Act in the same Assessment Year and the concerned Assessing Officers had verified their investments while calculating the disallowance under Section 14A on the basis of 0.5% of the average investments. The appellate authorities below have also recorded that the entire amount had been received by the assessee company by account payee cheques or demand drafts and that nothing has been brought on record by the Revenue that these orders under Section 143(3) passed by the investor companies are subject to proceedings under Section 147 or Section 263 of the Act.

6. Consequently, this Court is in agreement with the factual finding of the appellate authorities below that the identity, credit worthiness and genuineness of the transaction could not be doubted and that it cannot be said that the Assessee company had brought in its own unaccounted funds



through these investor companies as bogus share capital or share premium.

7. The Supreme Court in *Ram Kumar Aggarwal & Anr. vs. Thawar Das (through LRs)*, (1999) 7 SCC 303 has reiterated that under Section 100 of the Code of Civil Procedure the jurisdiction of the High Court to interfere with the orders passed by the Courts below is confined to hearing on substantial question of law and interference with finding of fact is not warranted if it involves re-appreciation of evidence. Further, the Supreme Court in *State of Haryana & Ors. vs. Khalsa Motor Limited & Ors.*, (1990) 4 SCC 659 has held that the High Court was not justified in law in reversing, in second appeal, the concurrent finding of the fact recorded by both the Courts below. The Supreme Court in *Hero Vinoth (Minor) vs. Seshammal*, (2006) 5 SCC 545 has also held that “*in a case where from a given set of circumstances two inferences of fact are possible, the one drawn by the lower appellate court will not be interfered by the High Court in second appeal. Adopting any other approach is not permissible.*” It has also been held that there is a difference between a question of law and a “substantial question of law”.

8. Consequently, this Court is of the view that no substantial question of law arises for consideration in the present appeal. Accordingly, the present appeal along with applications is dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

OCTOBER 10, 2022
AS