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

\+ **Date of Decision: 06.12.2019**

% **ITA 823/2019**

FIITJEE LTD (SUCCESSOR OF M/S TIMES A & M (INDIA) LTD
..... Appellant

Through: Mr. C.S. Aggarwal, Sr. Adv. with Mr. Ravi Pratap Mall and Mr. Uma Shankar, Advs.

versus

PR. COMMISSIONER OF INCOME TAX -2 ..... Respondent

Through: Mr. Sunil Agarwal, Sr. Standing Counsel with Ms. Priya Sarkar, Adv.

ITA 824/2019

FIITJEE LTD (SUCCESSOR OF M/S TIMES A & M (INDIA) LTD.
..... Appellant

Through: Mr. C.S. Aggarwal, Sr. Adv. with Mr. Ravi Pratap Mall and Mr. Uma Shankar, Advs.

versus

PR. COMMISSIONER OF INCOME TAX 2 ..... Respondent

Through: Mr. Sunil Agarwal, Sr. Standing Counsel with Ms. Priya Sarkar, Adv.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

VIPIN SANGHI, J. (ORAL)

C.M. No. 40928/2019 in I.T.A. No. 823/2019 and C.M. No. 40929/2019 in I.T.A. No. 824/2019

Exemptions allowed, subject to all just exceptions.

The applications stands disposed of.

I.T.A. No. 823/2019 & I.T.A. No. 824/2019

1. These two appeals assail the common order passed by the learned Income Tax Appellate Tribunal, Delhi Bench "D: New Delhi (ITAT) in ITA Nos. 2937 and 2773/Del/2011, preferred by the Revenue against the orders dated 16.03.2011 and 07.03.2011, passed by the learned CIT(A) – XIX, New Delhi in relation to assessment years 2004-05 and 2005-06 respectively.

2. ITA No. 823/2019, preferred before us relates to the assessment year 2005-06 and arises from the order in ITA No. 2773/Del/2011, whereas ITA No. 824/2019 relates to the assessment year 2004-05 arising from the order passed by the Tribunal in ITA No. 2937/Del/2011.

3. The appellant M/s Fiitjee Ltd. is the successor of M/s Times A & M (India) Ltd. The Assessing Officer in both the years under consideration, disallowed the web advertisement expenses and the depreciation claimed by the respondent assessee in respect of software purchase, on the ground that the web advertisement expenses were found to be bogus, and that the assessee was not able to establish, during the assessment proceedings, the genuineness of the purchase of software in respect of which the depreciation was claimed, and the assessee was also not able to establish the actual use to which the software, on which depreciation was claimed, was put. The appeal preferred by the assessee before the CIT (A) for the assessment year 2005-06 was allowed, and following the said decision, the CIT (A) allowed the appeal of the assessee for the assessment year 2004-05 as well. From the said two orders of the CIT (A), the aforesaid two appeals arose before the

Tribunal at the instance of the Revenue. The Tribunal re-appreciated the evidence on record, in extenso, and reversed the orders passed by the CIT(A) and restored the assessment orders for both the assessment years.

4. The submission of Mr. Aggarwal, learned senior counsel for the appellant is that substantial questions of law arise for consideration in the present appeals, since the factual findings returned by the Tribunal are perverse, and they have been arrived at contrary to, and by ignoring the evidence brought on record. To appreciate this submission of Mr. Aggarwal, we may refer to the detailed findings recorded by the Tribunal in the common impugned order, which, inter alia, reads as follows:

> *"17. We have carefully considered the rival contention and perused the orders of the lower authorities. For assessment year 2005 – 06 assessee has booked expenditure of web advertisement charges in the name of 4 companies amounting to Rs. 43,50,000 and in case of 3 companies in assessment year 2004 – 05 amounting to Rs. 2270,000/–.* ***On questioned by the AO to prove the genuineness of the web advertisement charges, assessee could submit the copies of invoices and allotment domain name****. To explicitly make it clear that Globextech India private limited has been paid a sum of INR 750,000 by the assessee for provision of web advertisement charges. To support and substantiate the allowability of the above expenditure, assessee submitted following details:-*
>
> *I. invoice copies to GlobexTech India Ltd from Omega Technologies Ltd dated 12/11/1998 to show the allotment of domain name Globextechin.com*
>
> *II. letter dated 26/3/2004 by assessee to Globex Tech India Ltd for giving advertisement*

III. advertisement provided by the appellant company to the advertiser

IV. Letter dated 1/4/2004 from the advertiser confirming that the advertisement has been placed on the website.

V. Confirmation of account from advertiser

VI. Master detail of the company of the recipient on registrar of companies website

VII. pan and CIN number

VIII. Affidavit from the advertiser in response to letter issued by the appellant company.

IX. Bank account, cheque numbers 700 666 dated 31/3/2005

X. invoice issued by Globextech India Ltd to the assessee dated 31/3/2005

XI. tax deduction at source certificate dated 30/5/2005

18. Similar details were provided for the other three recipients of the web advertising charges. ***The learned assessing officer noted that all the companies, which provided the web advertisement services to the assessee, are stationed at the same address. Therefore, AO issued notices u/s 133 (6) of the act asking for comprehensive details. In case of one company notice returned back unserved, with comments that no such firm exist. In case of other concerns, there was no response.*** *Therefore, assessee was asked to provide the current addresses of these companies.* ***Later on, he found that one Shri SK Gupta, who is an accommodation entry provider who was also surveyed by the income tax department and stated earlier that he is an accommodation entry provider, controls these companies.*** *Therefore, summons under section 131 of the income tax act was issued to these companies. However, nobody complied with those summons. Therefore,* ***the AO deputed the inspector to verify the existence of those companies who***

reported that no such companies existed at the new addresses given by the assessee. *Therefore, further summons were also issued under section 131 to these companies for the compliance, which was received by one person on behalf of all the companies. However, in response to the summons also there was no compliance. Therefore, the assessing officer did not have any other option but to enquire into the genuineness of the claim of the deduction of the above expenditure.* ***The assessing officer noted the various websites stated by those service providers. Detailed enquiry conducted by the AO is mentioned at page number 11 to 16 of the assessment order which conclusively proves that the services could not have been provided by these companies as domain names does not exist, the JSP (java Server page) technologies based on which the website of the services providers is claimed to have been launched, did not exist at that time, The learned AO specifically noted that the invoice letters of Omega Technologies dated 12/11/1998, says that they would provide JSP support to the website. (Java server Pages). However, such technology came out with its first version only in June 1999 and upgraded in December 1999.*** *This fact is neither controverted by the assessee nor by the learned CIT – A.* ***Therefore, it is apparent that such services were not at all in existence in the whole world on 12/11/1998. There is no answer in the order of the learned CIT – A, on all these observations of the learned assessing officer.***

19. ***With respect to the software purchase, the assessee could not produce even a single piece of evidence that how the software was developed as it was customized software. There is no answer about the requirement document of the software, about the development cycle, about the project phases, testing phases, running phases etc. There was no backup copy available with the assessee. Only precious thing available with the assessee was an obscure user manual copy. Even the original user manual was also not available.*** *The assessee could not produce the technical*

person who was associated with the development of the software. To scuttle the enquiry of the AO, merely a name was thrown and AO was asked to make necessary enquiry from the said person of the company who sold the software. ***It is the duty of the assessee to prove that it owns the software and uses it for its business purpose. On both the conditions, the assessee has miserably failed. Without looking into this requirement, the learned CIT – A, has deleted the disallowance of depreciation on the software. Therefore, the learned CIT appeal did not have any answer about the various issues raised by the learned assessing officer in his assessment order. In view of this, we do not have any reason to sustain the order of the learned CIT appeal, but looking at the order of the learned assessing officer, we have every reason to restore the order of the learned assessing officer.***

20. Now we come to the findings of the learned CIT appeal that on identical facts and circumstances in case of some other group concern, the additions have been deleted, and therefore he deletes the addition in case of the assessee for this year too. ***Firstly, the learned CIT appeal failed to notice a startling difference in the level of enquiries made by the learned assessing officer in the present case. With respect to the website advertisement expenditure, the Ld. Assessing officer has conclusively proved that Java server page on which the website of the service provider is maintained, such technology was never in existence.*** *The learned CIT appeal did not have any answer about the same. Further,* ***with respect to the software development the questions raised by the AO about the project and various development cycle for development of the software were never answered by CIT appeal.*** *Leaving aside even the order of the learned CIT appeal, there was no answer from the side of the assessee before any of the lower authorities on these issues but in fact, there was a complete stoic silence.* ***During the course of hearing, we have also asked about the several details of the software development and***

website advertisement. However, except the information provided to the lower authorities, no fresh information was put to our notice. It was not shown to us how CIT appeal has recorded that how above observations of the AO in the impugned order are met with in the order of sister concern on which he placed heavy reliance in deleting the disallowance. *On careful reading of page number 14 of his order, wherein he has quoted para number 5.4 of such order on which he relied, he has simply stated that the payments were made by account payee cheques and the assessee supported it with the necessary evidences. He further stated that the learned assessing officer disallowed the claim out rightly without making any effort of examining any of the companies. However, looking at the facts of the case of assessee, the learned assessing officer issued summons to each of the companies, deputed the inspector who submitted a report about the nonexistence of this companies and further 133 (6) notices remained unserved and unanswered. Perhaps these facts, the learned CIT appeal has lost sight of.* ***The learned CIT – A further stated that the AO relied upon the statement of Sri SK Gupta, without affording any opportunity for cross-examination. This finding is devoid of any merit as the AO has not at all issued any summons or enquired anything from Sri SK Gupta during the course of assessment proceedings. The learned assessing officer has merely taken as a support material of the statement of Shri SK Gupta dated 13/12/2006 during the course of search proceedings on Sri SK Gupta. Therefore, it is totally incorrect for CIT Appeal to have mentioned that the AO has made the addition on the basis of statement of Shri SK Gupta and A O has not granted an opportunity of cross-examination to the assessee. Even otherwise, the addition has not been made solely on the basis of the statement of Sri SK Gupta, but for the reason of failure of assessee to produce even the basic details about the claim of the expenditure as well as the ownership and use of the software. Further the learned CIT – A, was swayed by the***

fact that the assessee has made payment by account payee cheques. It is a matter of common knowledge that whenever there is an allegation of accommodation entries the transactions are always through account payee cheques.

21. With respect to the software purchase by the assessee and claim of depreciation thereon is squarely covered against the assessee by the decision of the honourable Delhi High Court in case of Chintel (supra) wherein the assessee could not prove the purchase of the software as genuine transaction as it was also developed by an entry operator controlled company, the honourable Delhi High Court confirmed the disallowance of depreciation on the same held as under :-

> *"AYs 2009-10 and 2010-11*
>
> *24. Turning to the appeals for AYs 2009-2010 and 2010-11 the short question involved is whether the Assessee was able to demonstrate that it was the Assessee which, in fact, purchased the software for a value of over Rs. 4.24 crore from MIL whose address has not been able to be verified by the AO.*
>
> *25. The Court finds that the ITAT has re-examined every shred of evidence to come to clear conclusion that the Assessee was not able to demonstrate the genuineness of the purchase software. Further the story put forth by the Assessee that the software having been handed over to Sobha was also not substantiated by any documentary evidence or even otherwise. On facts, therefore, the concurrent opinions of the AO, CIT(A) and the ITAT to the effect that the purchase of the software was, in fact, a bogus transaction not entitled to depreciation cannot*

be said to suffer from any legal infirmity warranting interference."

5. In furtherance of the submission taken note of hereinabove, Mr. Aggarwal submits that the Assessing Officer and the Tribunal have ignored the Statement of Shri. S.K. Gupta, who is alleged to have provided accommodation entries to the appellant assessee. Mr. S.K. Gupta, in his statement had clearly stated that actual services were rendered to the assessee against which invoices were raised and payments received. The statement of Shri. S.K. Gupta was recorded on 30.11.2009. Particular reference has been made by Mr. Aggarwal to Question No. 18 put to Mr. S.K. Gupta, FCA during his cross examination conducted on 30.11.2009 and the answer given by him to the said question, which reads as follows:

"Q.18. I further put to you Sh. Gupta that similar services of the nature of advertisement and animation of software have been provided to Times A & M (I) Ltd. by Six companies of your group names of which are as under:-

1. *Centenary Software (P) Ltd.*
2. *Era Advertising and Marketing Co. (P) Ltd.*
3. *P.G. Travels Hindustan Com. (P) Ltd.*
4. *Globex Tech (P) Ltd.*
5. *Hi. Tech Computech (P) Ltd.*
6. *Bolni Exim (P) Ltd.*

Ans. 'Yes' we have provided actual services to the above companies through our group of companies."

6. Mr. Aggarwal submits that the said witness was not re-examined and, therefore, the statement made by Shri S.K. Gupta, during his cross examination, could not be disregarded. Failure of the Assessing Officer and the ITAT to deal with the said cross examination has led to material evidence being ignored, and rendered the findings returned by the Assessing Officer and the Tribunal perverse.

7. We do not find any merit in the above submission of Mr. Aggarwal.

8. The Tribunal dealt with the aforesaid submission of the appellant in paragraph 28 of the impugned common order by, inter alia, observing as follows:

> *"28. Now we come to the issue of the cross examination of Shri S K Gupta. Presently there is no statement recorded of Shri SK Gupta by the learned assessing officer during the course of assessment proceedings of the assessee.* ***Further, the learned assessing officer has not made the disallowance on the basis of the statement of Shri SK Gupta but on account of failure of the assessee to substantiate that, it has incurred for web advertisement development charges as well as purchase of customized software on which depreciation is claimed****."*
>
> (emphasis supplied)

9. The finding returned by the Tribunal is a finding of fact upon appreciation of evidence and it is a plausible view. The appellant could not substantiate that it incurred web advertisement development charges and that it purchased customized software. The same, certainly, cannot be labled as perverse.

10. Mr. Aggarwal has argued that on identical facts and circumstances, for other assessment years and in respect of other group concerns, the additions made by the AO on the same counts, have been deleted. He submits that even this Court had dismissed the appeal preferred by the revenue against the orders passed by the Tribunal. In this regard, Mr. Aggarwal has placed reliance on the order dated 09.01.2018, passed in ITA No. 19/2018 in respect of the assessment year 2002-03. For Assessment Year 2002-03 scrutiny assessment was completed on 17.12.2005 bringing to tax a total amount of Rs. 1,95,97,564/-. Re-assessment proceedings were initiated on 04.03.2009 and completed by the Assessing Officer, who added back the sum of Rs. 1,14,12,184/- on the basis that the expenses claimed by the assessee for various activities, such as, web advertising, web designing, commission of franchise advertisement charges and software development, could not be sustained, as the entries with respect to the service providers were bogus. The additions were made largely premised on the statement of Mr. S.K. Gupta recorded on 13.12.2006, who stated that he had provided accommodation entries to various entities. The CIT (A) had deleted the addition of Rs. 1.14 crores on the premise that payments had been made through bank channels and the service providers, in respect of whom expenses were claimed, were income tax assessees. The ITAT had affirmed the said finding of the CIT (A). This Court dismissed the appeal preferred by the Revenue by observing as follows:

> *"Upon an overall conspectus of the circumstances, it is evident that the CIT(A) carried out a detailed analysis of the material on record, including, especially with respect to the genuineness of the transaction, whereby, the service providers were paid*

> *money towards expenses claimed in the assessee's returns. These findings are also collaterally supported by the fact that the service providers were income tax assessees. The ITAT confirmed these findings of fact. In the opinion of the Court, no question of law arises."*

11. Mr. Aggarwal has also placed reliance on the order passed by this Court in ITA No. 222/2018, dated 23.02.2018 in the Revenue's appeal preferred against the order passed by the ITAT for the Assessment Year 2004-05. For the said year, initially, assessment was made under Section 143(1). Later, acting upon information received, assessment was re-opened and a sum of Rs. 1,39,32,757/- was brought to tax on the ground that it represented bogus claims for payments made towards the services rendered. The CIT (A) set aside the re-assessment on the ground that the objections to the re-assessment notice were never decided. The ITAT affirmed that order. This Court dismissed the Revenue's appeal, by observing as follows:

> *"This Court notices that on the merits of additions made i.e. disallowance of the credit claimed, the ITAT and this Court had ruled against the Revenue. The Revenue had premised the re-opening of assessment on the basis of a statement made by one Mr. S.K. Gupta. The AO in the re-assessment order refused to give effect to the retraction of that statement, brushing aside the later statement, on the ground that it was made years later.* ***At the same time, this Court for another Assessment Year (AY 2002-03) held that whilst it was open to the AO to not rely upon the statement taken into account or rather ignore the retraction, yet, primary duty to verify the soundness of the claim of having been made genuine payment had to be gone into and verified.*** *This was not done and consequently in ITA 19/2018 Principal Commissioner of Income Tax (Central)-I vs. M/s FIIT JEE Ltd. decided on 9.1.2018, the Court upheld the*

order of ITAT setting aside the additions on merits made during the re-assessment. This Court had then observed, as follows:

> *".....The facts of the case are that for A.Y. 2002-03, the scrutiny assessment was completed on 17.12.2005 bringing to tax a total amount of Rs.1,95,97,564/-. Re-assessment proceedings were initiated on 04.03.2009 and completed by the Assessing Officer (AO), who added back the sum of Rs.1,14,12,184/- on the basis that expenses claimed for various activities such as web advertising, web designing, commission of franchise advertisement charges and software development, as claimed, could not be sustained, as the entries with respect to the service providers were bogus. The AO premised his findings largely upon statement of one Mr. S.K. Gupta on 13.12.2006, who stated that he had provided entry accommodation to various entities.*
>
> *Upon appeal, the CIT(A) deleted the additional sum i.e. Rs.1.14 Crores after verifying the expenses and observing that the payments were made through banking channels and that the service providers, in respect to whom expenses were claimed, were income tax assessees. The ITAT confirmed these findings.*
>
> *Upon an overall conspectus of the circumstances, it is evident that the CIT(A) carried out a detailed analysis of the material on record, including, especially with respect to the genuineness of the transaction, whereby, the service providers were paid money towards expenses claimed in the assessee's returns. These findings are also collaterally supported by the fact that the service providers were income tax assessees. The ITAT confirmed these findings of fact. In the opinion of the Court, no question of law arises.*

The appeal is therefore dismissed."

For the same reasons, since on the merits, the additions are not sustainable, the Court is of the opinion that no substantial question of law arises. The appeal is consequently, dismissed."

(emphasis supplied)

12. Mr. Aggarwal submits that the Tribunal, while passing the impugned order, has failed to deal with the aforesaid orders passed by this Court.

13. Having heard the submissions of Mr. Aggarwal and perused the impugned common order as well as the other documents relied upon by him, we are of the view that no substantial question of law arises in the present appeals for the reason that the issues with regard to the genuineness of the transactions undertaken by the assessee in relation to web advertisement development and purchase of customized software were purely factual issues, and a perusal of the impugned common order shows that the Tribunal has threadbare, not only appreciated the evidence brought on record, but has also countered the submissions advanced by Mr. Aggarwal. The Tribunal has specifically highlighted the error committed by the CIT(A) while allowing the assessee's appeal.

14. We have consciously set out, in extenso, the finding returned by the Tribunal in the common impugned order. A perusal of the same shows that the Tribunal has, at great pains, analysed the evidence placed on record to evaluate whether the transactions in question, namely one relating to web advertisement development and the other related to the purchase of the customized software, were genuine, or not.

15. The Tribunal concerned with the view of the Assessing Officer that the appellant/ assessee could not establish the genuineness of these transactions. One of the aspects taken note of by the Assessing Officer, while holding the said transactions to be not genuine (and that was not the only reason given by the Assessing Officer, and accepted by the Tribunal) was that Sh. S.K. Gupta, who is an accommodation entry provider had accepted to have provided the accommodation entries through his entities, which were claimed to have rendered the aforesaid services and supplied the software to assessee. During his cross-examination, the said Sh. S.K. Gupta had retracted from his earlier statement. However, the Tribunal found that his retraction and his statement in favour of the assessee was neither here nor there, since there was, otherwise, ample evidence which pointed to the fact that the said transactions were not genuine. Else, the appellant/ assessee would have been able to substantiate the genuineness of the transactions by producing relevant and material evidence, which it failed to do.

16. The fact that, in respect of other assessment years, the assessee had got away by claiming similar expenses towards web advertisement charges and purchase of customized software – with the dismissal of the revenue's appeal, even by this Court, is neither here, nor there. This is for the reason that each assessment year is separate and, as noticed by the Tribunal, the level of scrutiny undertaken by the Assessing Officer in other years – where the assessee had succeeded, was far less and the Assessing Officer had not done a thorough investigation to support the disallowance of the expenditure claimed by the assessee on the aforesaid two heads. The same cannot be

said about two assessment years in question, namely assessment years 2004-05 and 2005-06.

17. In fact, a perusal of the order passed by this Court in ITA No. 222/2018, dated 13.02.2018, extracted hereinabove shows that this Court had observed in relation to its order pertaining to the assessment year 2002-03 (for the same assessee), that while it was open to the Assessing Officer to not rely upon the statement of Sh. S.K. Gupta, or rather ignore the retraction, yet, his primary duty was to verify the soundness of the claim of the assessee of having made genuine payment. In the two years in question, this is exactly what the Assessing Officer has done. He has not placed reliance only on the statement of Sh. S.K. Gupta. In fact, he has undertaken a thorough investigation and established that the expenses claimed by the appellant/ assessee in relation to the two transactions aforesaid, were bogus.

18. Premised on the evidence, it cannot be said that the impugned common order suffers from perversity on account of non-consideration of any evidence brought on record, including the earlier orders passed in the case of the assessee by the CIT (A), the ITAT and by this Court.

19. The submission of Mr. Aggarwal that the Tribunal has not considered the earlier orders, inter alia, passed by this Court, also has no merit for the reason that the Tribunal has dealt with the said submissions in the following manner.

> *"22. Now we come to the various decisions relied upon by the learned Senior Advocate submitting that the issue squarely covered in favour of the assessee by quoting the decision of the*

coordinate benches which also confirmed by the honourable High Court in case of FIITJEE Ltd.

23. We first refer to the decision of the coordinate bench in ITA number 4946/del/2010 for assessment year 2002 – 03 where in para number 9 of the order it is stated that the assessing officer did not make any effort of examining any of the companies and evidences produced by the assessee and in that case, the addition was only made by the assessing officer on the statement of Shri SK Gupta, without affording any opportunity for cross examination. ***In the Present case, the assessing officer has made detailed enquiry. De hors the statement of Shri SK Gupta, assessee has failed to show that it has incurred expenditure for web advertisement and purchased the software. Further, we did not find the observation of the coordinate bench with respect to the non-availability of technology on which websites were developed, as well as the nonexistent websites of the advertisers and also the basic details called for by the AO with respect to software development lifecycle. In the present case, order of the assessing officer has clearly made further allegations and proved conclusively that the expenditure is bogus.***

24. Coming to the order for assessment year 2003 – 04 in ITA number 3651/del/2013, above order of the coordinate bench has quashed the reassessment proceedings and therefore it did not discuss anything on the merits of the issue. In para number 10.5 of the order stated that as the reopening was quashed and the CO of the assessee was allowed, coordinate bench did not thought it fit to go into merits of the appeal of the revenue at all. Therefore, that decision does not cover the issue on merit.

25. On the order of the coordinate bench in ITA number 3650/del/2013 and referred to para number 10.4 of the order facts are identical to the decision in 2003-04, where the reassessment has been quashed and the appeal of the revenue was dismissed without considering the merits.

> *26. Similarly, order of the coordinate bench for assessment year 2005 – 06 in ITA number 4947/del/2010 in paragraph number 6 of that order says that there was no addition on account of web hosting advertisement charges as well as purchase of software and disallowance of depreciation thereon. Further addition has been deleted in para number 6.1 merely on the on the fact that cross-examination of Sri. SK Gupta was not granted to the assessee.*
>
> *27. In view of this we are not inclined to agree with the argument of ld AR that issue is squarely covered in favour of the assessee is absolutely devoid of any merit."*
>
> (emphasis supplied)

20. This Court in ***Alpasso Industries (P) Ltd. v. Income – Tax Officer***, (2019) 410 ITR 212 (Delhi) rejected a similar submission of the appellant/ assessee and, while doing so, this Court reiterated the legal position as to when a finding of fact could be classified as perverse. This Court observed in the said decision as follows:

> *"**8.** A decision of question of fact depends upon appreciation of evidence and material placed before the authorities, i.e. the Tribunal. The Tribunal, as a final fact finding authority, has to determine and decide question of fact in dispute by examination of evidence and material produced. Inference and conclusion based upon appreciation of fact does not give rise to a question of law. In this context that the appellant claims and asserts that the decision of the Tribunal was perverse, and therefore substantial question of law arises from the impugned order.* ***A finding of a Tribunal on fact does not become perverse merely because another finding or conclusion was possible. Test and benchmark of perversity is far stringent and strict. Factual findings can be only interfered with when they are patently unreasonable, not supported by any evidence or are based upon extraneous and irrelevant material. Interference may be justified when the conclusions are based upon mere***

> ***conjectures and surmises or where no person acting judicially and properly instructed under the relevant law could have come to the same decision and conclusion. In the current factual matrix, having noted the evidence and material before the Tribunal, the final conclusion arrived at, it cannot be said, that Tribunal's conclusion was based upon no evidence to support or was rationally not possible or entirely unreasonable. The conclusion is also not contradictory."***
>
> (emphasis supplied)

21. The appellant has not been able to make out a case falling in any of the aforesaid categories. For the aforesaid reasons, we are of the view that no substantial question of law arises for our consideration in the present appeals. The appeals are, accordingly, dismissed.

VIPIN SANGHI, J.

REKHA PALLI, J.

DECEMBER 06, 2019
N.Khanna