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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + **ITA 148/2021 & CM APPL. 33270-271/2021**
PARAMOUNT RESIDENCY PRIVATE
LIMITED

..... Appellant

Through: Dr. Rakesh Gupta, Advocate with
 Mr.Somil Agarwal and Mr. Anshul
 Mittal, Advocates.

versus

DEPUTY COMMISSIONER OF INCOME TAX
& ANR.

..... Respondents

Through: Mr. Sunil Agarwal, Advocate with
 Mr.Tushar Gupta and Mr.Samarth
 Chaudhari, Advocates.

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Date of Decision: 27th September, 2021

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

J U D G M E N T

MANMOHAN, J: (Oral)

1. The appeal has been heard by way of video conferencing.
2. Present appeal has been filed challenging the order dated 11th December, 2020 passed by Income Tax Appellate Tribunal (hereinafter referred to as 'ITAT') in ITA No. 6150/Del/2014 for the Assessment Year 2011-12, whereby the appeal of the respondent/revenue was allowed.
3. After some arguments, learned counsel for the appellant states that he does not wish to contest the finding of the Tribunal that the Commissioner, Income Tax (Appeal) [hereinafter referred to as 'CIT(A)'] had erroneously held that the same amount could not have been taxed twice in the same year in hands of different tax entities. He, however, emphasises that neither the Commissioner, Income Tax (Appeal) nor the ITAT adjudicated upon the



merits of the case.

4. Issue notice. Mr. Sunil Agarwal, Advocate accepts notice on behalf of the respondents. He states that in view of the limited submission advanced by learned counsel for the appellant, he would not like to file any written reply or documents. He, however, submits that in view of the judgment of the Supreme Court in ***Principle Commissioner of Income Tax (Central-I) vs. NRA Iron & Steel Pvt. Ltd., (2019) 15 SCC 529*** the onus was on the respondent/assessee under Section 68 of the Act to prove the identity and creditworthiness of the lenders and genuineness of the loans.

5. A perusal of the paper book reveals that neither CIT(A) nor ITAT had considered the appellant's defence with regard to the issue of identity and creditworthiness of the lenders and genuineness of the loans as stipulated under Section 68 of the Act.

6. Consequently, the following question of law is framed in the present appeal:-

“Whether, on the facts and in the circumstances of the case, the Tribunal was wrong in reversing the decision of CIT(A) without remanding the case to the CIT(A) for adjudication of the case on merits”

7. The Supreme Court in ***Principle Commissioner of Income Tax (Central-I) vs. NRA Iron & Steel Pvt. Ltd.***(supra) has held as under:-

“13.1. The assessee is under a legal obligation to prove the genuineness of the transaction, the identity of the creditors, and credit-worthiness of the investors who should have the financial capacity to make the investment in question, to the satisfaction of the AO, so as to discharge the primary onus.



13.2. The Assessing Officer is duty-bound to investigate the credit-worthiness of the creditor/ subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name-lenders.

13.3. If the enquiries and investigations reveal that the identity of the creditors to be dubious or doubtful, or lack credit-worthiness, then the genuineness of the transaction would not be established. In such a case, the assessee would not have discharged the primary onus contemplated by Section 68 of the Act.”

8. Keeping in view the fact that CIT(A) had not considered the appellant's defence with regard to identity and creditworthiness of lenders and genuineness of the loans in question, this Court remands the matter to the CIT(A) to consider the appellant's said defence under Section 68 of the Act. At the cost of repetition, it is emphasised that the finding given by the CIT(A) in the impugned order dated 8th August, 2014 is set aside

9. With the aforesaid direction, the appeal along with pending applications stands disposed of.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.

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MANMOHAN, J

NAVIN CHAWLA, J

SEPTEMBER 27, 2021/TS