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

\+ ITA 305/2022

PR. COMMISSIONER OF INCOME TAX -7 ..... Appellant

Through: Mr.Puneet Rai, Sr.Standing Counsel for the Revenue.

versus

M/S SPG FINVEST PVT. LTD. ..... Respondent

Through: Mr.Ved Jain with Mr.Rich Mishra and Mr.Aminish Tripathi, Advocates.

% Date of Decision: 14th September, 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 27th November, 2020 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 3736/Del./2017 for the Assessment Year 2012-13.

2. Learned counsel for the Appellant states that the ITAT has erred in law in admitting fresh evidence by overlooking the provisions laid down under Rule 46A since the assessee had not explained any cause which prevented it from producing evidence before the Assesing Officer.

3. He states that the ITAT has erred in law in deleting the addition of Rs.3,00,00,000/- on account of unexplained share capital and share premium overlooking the fact that the assesse company had failed to explain the reasons for high share premium /capital which was not commensurate with

the assets owned by the assessee company.

4. He further states that the ITAT has erred in law in deleting the addition of Rs.27,88,000/- on account of unsecured loans without considering that the assessee company failed to prove the genuineness, creditworthiness and identity of the lender and the additional evidences filed by the assessee company is not material in support against the said addition.

5. He also states that the ITAT has erred in law in deleting the addition of Rs.1,31,27,449/- made by the Assessing Officer on account of unexplained investments overlooking the fact that the assessee company made investment in new companies at much higher price than its real worth in the previous years and the year under consideration.

6. A perusal of the paper book reveals that both the Appellate Authorities below have recorded concurrent findings of fact that the Assessing Officer did not issue specific show cause notice with respect to the additions made in the assessment order to the assessee during the assessment proceedings and therefore, there was reasonable cause with the assessee in not filing the evidences before the Assessing Officer. The ITAT also noted that though the Assessing Officer was given due opportunity under Rule 46A(2) of the Income Tax Rules, 1961, yet the Assessing Officer did not make any proper averment with regard to the admission of additional evidences particularly when huge additions had been made which included the amount added under Sections 68 & 69 of the Income Tax Act, 1961 ('the Act') which were carried forward from the earlier years.

7. With respect to the addition of Rs.3,00,00,000/- on account of unexplained share capital and share premium, both the Appellate Authorities below deleted the said addition on the ground that addition under Section 68

of the Act cannot be made because the said amount was being carried forward from earlier years, which is evident from letter dated 04th March, 2015 filed before the Assessing Officer and there had been no increase in paid up share capital and that this fact was not controverted by the Assessing Officer.

8. With respect to the addition of Rs.27,88,000/- on account of unsecured loans, both the Appellate Authorities below have held that the amount of Rs.25 lacs pertained to the earlier assessment year and was appearing as unsecured loan in the balance sheet as on 31st March, 2011. It was recorded that most of the unsecured loan were in fact paid repaid during the year and only an amount of Rs.2,88,000/- was received in this year as fresh loan. The CIT (A) while examining the genuineness of fresh loan of Rs.2,88,000/- found that identity and creditworthiness of the lender M/s. DMC Education Ltd. had been substantiated by the assessee by way of various documentary evidences. The ITAT observed that the finding of the CIT (A) based on proper appreciation of facts cannot be tinkered without any contrary material to rebut.

9. With respect to the addition of Rs.1,31,27,449/- on account of unexplained investments, the ITAT deleted the said additions on the ground that out of the said addition, amount of Rs.48,27,449/- pertained to the earlier year which was not in dispute and accordingly the CIT(A) rightly deleted the said amount from the addition made by the Assessing Officer and with regard to the balance amount, there is a clear finding based on material on record that investments had been made by the assessee through proper banking channels and each and every entry had been duly explained from the books of account and bank statement. The ITAT further recorded

that once the investments have been made through cheques duly disclosed in the books of account, the same cannot be added as investment made outside the books or from undisclosed sources under Section 69 of the Act. Consequently, this Court finds that there is no perversity in the findings of the CIT(A) and ITAT.

10. The Supreme Court in the case of ***Ram Kumar Aggarwal & Anr. vs. Thawar Das (through LRs), (1999) 7 SCC 303*** has reiterated that under Section 100 of CPC, 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 the 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 'question of law' and a 'substantial question of law'.

11. Accordingly, no substantial question of law arises for consideration in the present appeal and the same is dismissed.

MANMOHAN, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 14, 2022/KA