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

+ **ITA 136/2023 & CM Nos.11139-40/2023**

PCIT-7, DELHI

..... Appellant

Through: Mr Sunil Agarwal, Sr Standing Counsel with Mr Shivansh B. Pandya, Jr Standing Counsel and Mr Utkarsh Tiwari, Adv.

versus

M/S SANJIVANI INDUSTRIES PVT LTDRespondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

% **07.03.2023**

[Physical Hearing/Hybrid Hearing (as per request)]

CM No.11140/2023

1. Allowed, subject to the appellant filing legible copies of the annexures, at least three days before the next date of hearing.

ITA 136/2023 & CM No.11139/2023 [Application filed on behalf of the appellant seeking condonation of delay in filing the appeal]

2. This appeal concerns Assessment Year (AY) 2009-2010.

3. The appellant/revenue seeks to assail the order dated 31.05.2022 passed by the Income Tax Appellate Tribunal [in short, "Tribunal"].

4. The core issue which arises for consideration is: whether the addition made under Section 143(3) read with Section 153A of the Income Tax Act, 1961 [in short "Act"] should be sustained, as it is based on a statement made by, one, Mr Mul Chand Malu under Section 132(4) of the Act.

ITA 136/2023

page 1 of 2



5. The respondent/assessee's stand is, that Mr Mul Chand Malu was neither its promoter nor director. The respondent/assessee seems to assert, that Mr Mul Chand Malu had no connection with it.
6. The Tribunal *via* the impugned judgment has ruled in favour of the respondent/assessee, on the ground that the addition under Section 68 of the Act concerning money received by way of share application and share premium cannot be made solely based on a statement made by Mr Mul Chand Malu under Section 132(4) of the Act.
 - 6.1 In this context, reference has been made to the judgment of a coordinate bench of this Court rendered in *PCIT v. Best Infrastructure (India) Pvt. Ltd.* 397 ITR 82.
7. Mr Sunil Agarwal, who appears on behalf of the appellant/revenue, says that a connected matter, i.e., ITA No.143/2022, titled *Principal Commissioner of Income Tax Central 3 v. Kuber Khadyan Pvt Ltd.* is listed before the Court on 19.07.2023.
8. Issue notice to the respondent/assessee *via* all modes, including e-mail.
9. List the matter on the same date i.e., 19.07.2023.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MARCH 7, 2023

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[Click here to check corrigendum, if any](#)