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

+ ITA 493/2024

PR. COMMISSIONER OF

INCOME TAX-7, DELHI

.....Appellant

Through: Mr. Puneet Rai, SSC with Mr. Ashvini Kumar, Mr. Rishabh Nangia and Mr. Nikhil Jain, SCs.

versus

RPS INFRASTRUCTURE LTD.

.....Respondent

Through: Mr. Ved Jain, Mr. Nischay Kantoor, Ms. Soniya Dodeja, Advocates.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

% **12.09.2024**

CM APPL. 53440/2024 (Exemption)

Allowed, subject to all just exceptions.

This application stands disposed of.

CM APPL. 53441/2024 (210 days delay in refilling), CM APPL.

53442/2024 (48 days delay)

Bearing in mind the disclosures made, the delay of 210 days in filing the appeal and delay of 48 days in filing the appeal is condoned.

Applications stand disposed of.

ITA 493/2024

1. The Principal Commissioner impugns the order of the Income Tax Appellate Tribunal [**Tribunal**] dated 22 June 2023 and poses



the following questions for our consideration:-

“i. Whether in the facts and circumstances of the case and in law, Hon'ble ITAT was correct in quashing the assessment order on the basis of change of opinion without appreciating that new information was available with the assessing officer subsequent to passing of the assessment order on the basis of which a belief of escapement was formed?

ii. Whether the Hon'ble ITAT has failed to observe that a survey operation u/s 133A was carried out on the premises of RPS Infrastructure Group entities wherein receipt of bogus share capital/share premium was concluded which formed basis of escapement of income?

iii. Whether the Hon'ble ITAT has failed to observe that principle of change of opinion is not applicable when new information/facts comes to the knowledge of the assessing officer?”

2. From the record we gather that although the Commissioner of Income Tax (Appeals) [‘CIT(A)’] had upheld the initiation of reassessment action, it had ultimately and on merits deleted the additions which were made under Section 68 of the Income Tax Act, 1961 [‘Act’].

3. On the appeal which came to be preferred at the behest of the Income Tax Department, the assessee filed cross objections which have now come to be allowed. The Tribunal has essentially doubted the validity of the invocation of action under Section 148 bearing in mind the fact that the issue of share application money was one which appears to have been duly examined in the course of the assessment under Section 143(3). It is on the aforesaid basis, that the Tribunal has ultimately held as follows:-

“14. It is found from the record that during the survey operation carried on 21.10.2013 at the business premises of the assessee company, no incriminating material was found, neither there was any discrepancy in the books of the assessee was noted by the survey team. The case of the assessee admittedly was reopened u/s 147 of the Act on the basis of the Investigation report of the Investigating Wing. During the assessment proceedings the AO



made independent enquiry u/s 133(6) of the Act. All the notices have been served on all the parties and have been duly responded by them. The addition has been made by the A.O. of Rs. 23,16,00,000/-, by invoking the provision of section 68 of the Act on share application money received during year under consideration. The said addition has been deleted by the CIT(A) on the ground that the finding given by the A.O. in the assessment order that the share application money received by the Assessee were accommodation entries and Assessee had invested its own money was not based on any material facts available on record and held that the findings given by the A.O. is not justified.

15. Considering the fact that the assessment proceedings were initiated beyond 4 years and during the scrutiny proceedings u/s 143(3) of the Act, the Assessee had already disclosed all the details and facts regarding the share application money on the specific query and considering the fact that the assessment proceedings were initiated on satisfaction borrowed from report of Investigation Wing, in the absence of any whisper or allegation on the Assessee regarding non disclosure of fully and truly all material facts in the reasons, in our considered opinion the proceedings initiated u/s 148 of the Act cannot be sustained.

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20. In view of the above facts and circumstances, we are of the opinion that the reassessment proceedings initiated by the A.O. u/s 147/148 of the Act on mere change of opinion and reviewing the completed assessment is contrary to the settled position of law (supra) thus, we find merit in Grounds of the C.O filed by the Assessee, accordingly, we allow Ground No. 1 to 6 of the assessee and quash the assessment order and the order of the CIT(A).”

4. In view of the findings recorded in paragraph 15 and which were not shown to suffer from any patent error or illegality, we find no substantial question of law which can be said to arise. The appeal consequently fails and shall stand dismissed.

YASHWANT VARMA, J.

RAVINDER DUDEJA, J.

SEPTEMBER 12, 2024/vp