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

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*Date of Decision : 16.10.2024*

+ **ITA 524/2024**

THE PR. COMMISSIONER OF INCOME TAX –

CENTRAL -1

.....Appellant

Through: Mr. Apoorv Kurup, GCSC for UOI  
with Mr. Satya Aggrawal, Advocate.

versus

NAVEEN INFRADEVELOPERS & ENGINEERS  
PVT. LTD.

.....Respondent

Through:

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA**

**VIBHU BAKHRU, J. (ORAL)**

**CM APPL. 60639/2024 (condonation of delay in filing)**

1. For the reasons stated in the application, the delay in filing the appeal stands condoned.
2. The application stands disposed of.

**CM APPL. 60640/2024 (condonation of delay in re-filing)**

3. For the reasons stated in the application, the delay in re-filing the appeal stands condoned.



4. The application stands disposed of.

**ITA 524/2024**

5. The Revenue has filed the present appeal under Section 260A of the Income Tax Act, 1961 (hereafter *the Act*) impugning an order dated 22.01.2024 passed by the learned Income Tax Appellate Tribunal (hereafter *the learned ITAT*) in ITA No. 80/Del/2022 captioned ***The Dy. CIT Central Circle -06, New Delhi v. M/s Naveen Infradevelopers & Engineers Pvt. Limited.***

6. The Revenue had preferred the said appeal [ITA No. 80/Del/2022] against an order dated 28.06.2021 passed by the Commissioner of Income Tax (Appeals)-24 [hereafter *CIT(A)*] in respect of assessment year (AY) 2012-13.

7. The controversy in the present appeal relates to the assessment framed in respect of AY 2012-13 pursuant to re-assessment proceedings initiated under Section 147 of the Act.

8. The Assessing Officer (hereafter *the AO*) issued a notice under Section 148 of the Act and initiated re-assessment proceedings for the AY 2012-13. The said notice was premised on the basis that the assessee's turnover, as disclosed in its return filed on 25.09.2012, was in variance with the receipts in its bank accounts. The assessee had disclosed a turnover of ₹52,50,00,000/-, however, the credit entries in its bank accounts were stated to be over ₹1,39,00,00,000/-.

9. The assessee had explained the difference between the turnover and



the receipts on account of loans availed during the said period. The AO concluded that after accounting for the other transactions, in addition to the transactions relating to sales, a credit of ₹24,00,00,000/- remained unexplained.

10. Pursuant to the re-assessment proceedings, the AO had framed an assessment order assessing the assessee's income chargeable to tax at ₹65,40,00,000/- in terms of an assessment order dated 22.01.2024. The assessee preferred an appeal against the said assessment order before the CIT(A), which was allowed on the ground that no income had been brought to tax on the grounds set out in the notice issued under Section 148 of the Act. The CIT(A) reasoned that in the event no addition was made on account of the grounds as stated for re-opening the assessment, no further addition could be made.

11. Aggrieved by the said decision, the Revenue had preferred the appeal before the learned ITAT. Its grievance, as noted by the learned ITAT in the impugned order, is reproduced below:

“1. On the facts and in the circumstances of the case, the CIT(A) has erred in deleting the addition of Rs. 65,40,00,000/- u/s 68 of the Act on concluding that when on the ground on which reopening of assessment was based, no additions are made by the Assessing Officer in the order of assessment, he cannot make additions on same other grounds which did not form part of the reasons recorded by him.

2. On the facts and in the circumstances of the case, the CIT(A) has erred in not appreciating explanation 3 of Section 147 of the IT Act, 1961 in which it is provided that the Assessing Officer may assess or reassess the income in respect of any issue, which has escaped assessment, and such issue comes to his notice



subsequently in the course of the proceedings under this section, notwithstanding that the reasons for such issue have not been included in the reasons recorded under sub-section (2) of Section 148”

12. The learned ITAT had found no fault with the decision of the CIT (A) and had, accordingly, dismissed the Revenue’s appeal.

13. In the aforesaid facts, the Revenue has projected the following questions for consideration of this Court:

“2.1 Whether on the facts and circumstances of the case and in law, the Ld. ITAT was justified in holding that the other additions made in the order under section 147/143(3) which were not part of the reasons recorded for reopening the assessment were sustainable in the eyes of law even after insertion of explanation 3 to section 147 of the Act by the Finance (No.2) Act, 2009?

2.2 Whether on the facts and circumstances of the case and in law, the Ld. ITAT correctly interpreted the decision reported in the case of CIT VS Jet Airways ( I) Ltd. Reported in [2011] 331 ITR 236 (Bom) and Ranbaxy Laboratories Ltd. Vs CIT reported in [2011] 336 ITR 136( Delhi ) on facts of the instance case when SLP on same issue is pending before the Hon'ble Supreme Court in the case of DIT (IT2) Vs ITA-524/2024 Black Veatch Prichand Inc. in C.A. No., 9887/2018?”

14. Undisputedly, the controversy involved in the present case – whether any addition can be made by the AO pursuant to initiation of re-assessment proceedings, notwithstanding that no addition is made on the grounds on the basis of which the assessment was reopened – is covered by an earlier decision of this Court in *Ranbaxy Laboratories Ltd. v. Commissioner of Income Tax: 2011 336 ITR 136 (Delhi)*. The said issue was also considered by this Court in the recent decision of *ATS Infrastructure v. Assistant*



***Commissioner of Income Tax, Circle 1 (1) & Ors.: 2024 SCC OnLine Del 5048.*** It is not disputed that the questions of law, as projected, are covered in favour of the assessee by the said decisions.

15. In view of the above, no substantial questions of law arise for consideration of this Court in this appeal.

16. The present appeal, is accordingly, dismissed.

**VIBHU BAKHRU, J**

**SWARANA KANTA SHARMA, J**

**OCTOBER 16, 2024**

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*Click here to check corrigendum, if any*