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

% *Decision delivered on: 01.12.2023*

+ **ITA 677/2023 & CM Nos.62028-30/2023**

CHANDRA PRAKASH

..... Appellant

Through: Ms Shreya Jain and Mr Gaurav
Tanwar, Advs.

versus

ITO, WARD 6(4)

..... Respondent

Through: Mr Sanjay Kumar, Sr Standing
Counsel.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE GIRISH KATHPALIA

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

RAJIV SHAKDHER, J. (ORAL):

CM No.62029/2023

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

ITA 677/2023, CM No.62028/2023 [*Application filed on behalf of the appellant seeking interim relief*] & CM No.62030/2023 [*Application filed on behalf of the appellant seeking condonation of delay of 137 days in re-filing the appeal*]

2. This appeal concerns Assessment Year (AY) 2005-06.

3. Via the instant appeal, the appellant/assessee seeks to assail the order dated 29.09.2022 passed by the Income Tax Appellate Tribunal [in short,



“Tribunal”].

4. The Tribunal has sustained the addition made by the Assessing Officer (AO) amounting to Rs.1,07,64,950/- under Section 68 of the Income Tax Act, 1961 [in short, “Act”].

4.1 To be noted, the Commissioner of Income Tax (Appeals) [in short, “CIT(A)”] had also sustained the order of the AO. Consequently, the appeal preferred by the appellant/assessee before the CIT(A) was dismissed.

5. The record shows that the litigation by the appellant/assessee before the Tribunal was a second round. In the first round, *via* the order dated 11.03.2016, the Tribunal had remanded the matter to the AO, in view of the remand report dated 25.02.2012 submitted by the AO to the CIT(A), in the first round.

6. The Tribunal was of the opinion that a thorough inquiry had to be made, having regard to the observations of the AO that no evidence was available with the revenue which could establish that the appellant/assessee had earned Rs.5,13,05,350/- in the following AYs: AY 2005-06, AY 2006-07 and AY 2007-08.

6.1 Although this observation was made, the AO had asserted that the appellant/assessee was an entry provider and the initial onus lay upon him to prove the source of cash receipts found in his bank account.

7. Ms Shreya Jain, who appears on behalf of the appellant/assessee, even while accepting the fact that the appellant/assessee was an entry provider, submitted that what could have been added to the appellant/assessee’s income was only the commission received by him.

7.1 In other words, it was Ms Jain’s argument that the appellant/assessee was only a conduit, and once money was received by him through his



brother-in-law, one Mr Dinesh Prasad, cheques were issued to certain entities, which invested the money received by them in the equity share capital of other companies.

8. The record shows that the appellant/assessee had, in fact, submitted a list comprising 280 investors. Out of the 280 investors, it appears that 89 had reported that they had not entered into any transaction with the appellant/assessee.

9. Insofar as the remaining investors/persons were concerned, either they did not reply or the notices directed to them by the AO were returned unserved. Based on the record, the Tribunal concluded that the information furnished by the appellant/assessee in the remand proceedings was no different from what was furnished in the first round.

10. Furthermore, the Tribunal correctly concluded that once unexplained credit was found in the books of accounts, the initial onus under Section 68 of the Act lay on the assessee.

11. In a nutshell, the Tribunal held that there was no material except the assertion of the appellant/assessee that he was merely an entry provider and, therefore, only the amount received as commission ought to have been added to his income.

12. We may note that Ms Jain made a valiant attempt to defend the position of the appellant/assessee by submitting that the appellant/assessee could not assist the AO in unravelling the truth, since Mr Dinesh Prasad had expired immediately after the assessment order was passed in the first round.

13. Having regard to the record and the approach adopted by the Tribunal, we are unable to persuade ourselves that this is a fit case for interfering with the impugned order.



14. According to us, no substantial question of law arises for our consideration.
15. The appeal is, accordingly, closed.
16. Consequently, the pending applications are rendered inefficacious and, therefore, closed.

RAJIV SHAKDHER, J

GIRISH KATHPALIA, J

DECEMBER 01, 2023

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