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

\+ ITA 262/2018

PRINCIPAL COMMISSIONER OF INCOME TAX-3

..... Appellant

Through: Mr. Sanjay Kumar with Mr. Rahul Chaudhary, Standing Counsels for Revenue.

versus

M/S E-SMART SYSTEMS PRIVATE LIMITED

..... Respondent

Through: Mr. Madhur Aggarwal, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A. K. CHAWLA

O R D E R

% 28.02.2018

1. The Revenue challenges an order of the ITAT which set aside the amount of ₹4,16,18,889/- brought to tax under Section 68 of the Income Tax Act, 1961 (for short "the Act") by the Assessing Officer (AO).

2. The assessee claimed that the amount in question was received by it as share application money, by two foreign nationals. The AO rejected the explanation after considering the evidence led before him. The CIT(A), to whom the assessee appealed, rejected its request for adducing additional evidence. However, the Appellate Commissioner had sought a remand report. The assessee appealed to the ITAT which has allowed its plea.

3. The Revenue urges that the ITAT fell into error in not noticing that the assessee had persistently shown debit balance and

that along with the returns adequate documents or material had not been led to establish the genuineness, creditworthiness and identity of the share applicants. It is also contended that adducing additional evidence was of no avail since the CIT(A) correctly observed that what was produced were the photographs of relevant documents.

4. A consideration of the impugned order would reveal that in the remand report sought, the AO did not dispute the veracity of the documents produced. Furthermore, the two individuals who had applied for shares, were made Directors of the assessee company. Prima facie, therefore, the assessee had discharged the onus that was placed upon it to disclose the identity of the share applicants and the genuineness of the money infused having regard to the this, the ITAT concluded as follows:

> *"13. It has not been disputed by the AO that sum has been received by the assessee from the aforesaid two individuals for the allotment of the cumulative preference shares and same is also evident from the copy of the FIRC submitted by the appellant wherein it has specifically been stated that the purpose of the remittances are towards the subscription of the shares in the appellant company. AO has also not doubted the identity of the aforesaid two individuals nor had disputed the genuineness of the transaction. However in respect of Mr. Gregory Douglas Strohfeidt, he has 'doubted' the source of the credits in his bank account and in respect of Mr. Patrick Brian Joseph, it was stated that sum has been received by appellant from his bank account, and at the time of remittance he has debit balance as such, his source is also doubted. It is*

submitted that during the course of the appellate proceedings, appellant filed an application under Rule 46A of the Income Tax Rules, and alongwith the application, appellant filed the Tax Returns of both the individuals. That from the perusal of the aforesaid return of income, it would be seen that for the period 06.04.2011 to 05.04.2012, Mr. Curran has shown an income of 1,52,289/- (placed at page 287-289 of PB) and Mr. Gregory stofeldt of AUD 80,217/- which clearly show that such persons are man of means and have sufficient creditworthiness for making investment in the appellant company. In respect of Mr. Patrick Brian Joseph, appellant also filed the confirmation from the bank (placed at page 326-328 of PB) showing that overdraft facility has been granted to him against the investment held by bank and he has used only 30% of the overdraft facility, which clearly indicates that investments are far greater than the overdraft.

14. In respect of Mr. Douglas, appellante filed the financial statement of Fiwian Superannuation Fund, a communication from the financial advisor confirming that funds credited in the aforesaid Superannuation Fund belong to Mr. Douglas and also statement showing the movement of funds from the Superannuation. It is submitted that in accordance with the Australian laws, Mr. Douglas has founded the Superannuation Fund, in which, at the relevant time, he was the provisions of the Superannuation Fund Deed. Accordingly, from the Superannuation Fund, Mr. Douglas had remitted his contribution directly to the appellant company, in relation to the amount of investment made. It is reiterated that the aforesaid approach had been adopted by Mr. Douglas to avoid two-way traffic of the Fund of first receiving the funds to his account and thereafter remitting the funds to the appellant company from his account.

However, learned CIT(A) firstly did not admit the additional evidences furnished by the appellant on the ground that such documents were not attested as per the provisions of Diplomatic and Consular Office (Oaths and Fees) Act, 1948. It is relevant to state that AO in his remand report dated 10.10.2016 did not dispute the veracity of the additional evidences furnished by the assessee and further learned CIT(A) did not admit the additional evidences purely on technical ground which is wholly unwarranted in law. In fact, additional evidences were computerized documents and have evidentiary value. It is submitted that it is settled law that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred. It is further submitted that it is also settled law that the rigor of the rule of evidence contained in the Evidence Act did not apply to the proceedings under Income Tax Act. In such circumstances, the additional evidences furnished by the appellant and rejected by the learned CIT(A) which merely supports the claim of the appellant that the investors had sufficient creditworthiness is wholly misconceived."

5. The above extract as well as the orders of the CIT(A) disclose that initially burden cast upon the assessee had been adequately discharged by sufficient evidence. The fact that the share applicants were Directors of the assessee was also undisputed.

6. In these circumstances, the findings of the ITAT are essentially factual. No substantial question of law is involved in the appeal which is accordingly dismissed.

S. RAVINDRA BHAT, J

FEBRUARY 28, 2018/kks **A. K. CHAWLA, J**