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

+ ITA 836/2018

PR. COMMISSIONER OF INCOME TAX DELHI - 2

..... Appellant

Through: Mr. Shlok Chandra, Sr.SC with
Ms. Madhavi Shukla and Ms.
Priya Sarkar, Jr.SCs along with
Mr. Shashank Kesarwani,
Advs.

versus

M/S. BLUE BIRD SOFTWARE PVT. LTD. Respondent

Through: Mr. Sumit Lalchandani, Mr.
Salil Kapoor, and Mr. Mandeep
Mehta, Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE PURUSHAINDR KUMAR

KAURAV

ORDER

28.02.2024

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1. Notice. Since the respondent is duly represented by Mr. Lalchandani, no further steps may be taken.
2. The Principal Commissioner of Income Tax-2 assails the order of the Income Tax Appellate Tribunal ["ITAT"] dated 27 December 2017 in terms of which it has upheld the decision of the Commissioner of Income Tax (Appeals) ["CIT(A)"] dated 14 December 2011 which had deleted the additions made under Section 68 of the Income Tax Act, 1961["Act"].
3. We note that neither the CIT(A) nor the ITAT appear to have adverted to the following findings of criticality which came to be



recorded by the Assessing Officer [“AO”] in its order dated 31 December 2010:

“19. However, as already discussed, in order to verify the genuineness of the transactions and existence of parties/ persons, local enquiries were made by the Investigation Wing of Kolkata but none of the company was found at their given address/ found to be genuine.

20. Further, on verification of bank statements of the share applicants as produced by the assessee, it is observed that the day when the cheque for specific amount has been credited, then, either on same day or next day cheque for same amount has been issued to the assessee company. It further observed that in the bank account of the share applicant very nominal balances remains throughout the year. This shows that the so called shareholder was not having enough creditworthiness to make such an investment in the assessee company. Further, to prove the identity of person and credit worthiness of the share applicant the assessee was requested to produce them but the assessee has failed to produce them.”

4. We are thus of the opinion that the appeal merits admission. Accordingly, we admit the instant appeal on the following questions of law:

A. Whether the judgment rendered by the ITAT is not rendered fully perverse bearing in mind the conclusions recorded by the AO in paragraph nos.19 and 20 of the Assessment Order?

5. Let the appeal be called again on 02.05.2024.

YASHWANT VARMA, J.

PURUSHAINDR KUMAR KAURAV, J.
FEBRUARY 28, 2024/p