

Court No. - 39

Case :- INCOME TAX APPEAL No. - 44 of 2019

Appellant :- Principal Commissioner Of Income Tax

Respondent :- M/S Guru Prasad Holding Pvt. Ltd.

Counsel for Appellant :- Manu Ghildyal

Counsel for Respondent :- Rahul Agarwal

Hon'ble Saumitra Dayal Singh,J.

Hon'ble Shiv Shanker Prasad,J.

1. Heard Mr. Manu Ghildyal, learned counsel for the revenue-appellant and Ms. Upasana Agarwal, Advocate holding brief of Mr. Rahul Agarwal, learned counsel for the assessee-respondent.

2. The above Income Tax Appeal has been filed under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the "Act") against the order dated 11th October, 2018 passed by the Income Tax Appellate Tribunal, Agra Bench, Agra in Income Tax Appeal No. 310/Agra/2017 for Assessment Year 2010-2011.

3. By that order, the learned Tribunal has dismissed the appeal filed by the revenue and, thus, confirmed the order passed by the CIT (Appeals) dated 28th February, 2017, allowing the assessee's appeal, deleting additions made under Section 68 of the Act with respect to share capital Rs. 19 crores invested in the assessee's company by three entities, namely-M/s Jewellock Trexim Pvt. Ltd., M/s Alberta Merchants Pvt. Ltd. and M/s Guru Prasad Holding Pvt. Ltd..

4. The present appeal has been pressed on the following questions of law:

"1. Whether on the facts and circumstances of the case and in law, the ITAT was justified in confirming the order of the CIT (A), without calling for the assessment records, on the ground that no satisfaction u/s 153C was recorded by AO, when the revenue in its grounds of appeal before ITAT had clearly mentioned that the reasons have been duly recorded by the AO and available on record creating substantial question of law in view of ratio of judgment in case of Vijay Kumar Talwar 300 ITR 1 (SC)?

2. Whether on the facts and circumstances of the case and in law, the ITAT was justified in confirming the order of CIT(A) annulling the assessment order by accepting the contention of the assessee that no satisfaction u/s 153C was recorded by AO, without appreciating that the assessee had duly participated in the proceedings u/s

153C and never raised any objection before the AO regarding non recording of satisfaction u/s 153C and hence such contention was impermissible?

3. Whether in the facts and circumstances of the case and in law, the order of the ITAT was perverse on the ground that it failed to call for the records to verify the conclusion of CIT(A) that there was no satisfaction recorded as against the contention of the revenue that satisfaction was available on record?"

5. By a separate order passed today in Income Tax Appeal No. 46 of 2019 (Principal Commissioner of Income Tax Vs. M/s Pnc. Infratech Ltd.) for the Assessment Year 2010-2011, we have dismissed the appeal filed by the revenue. In that case, question of law proposed was *para materia* to question no.3 in the present appeal.

6. Insofar as question no.3 proposed/involved in the present appeal and the solitary question dealt with in Income Tax Appeal No. 46 of 2019 was merit issue and since that appeal has not been entertained, same fate must arise in the present appeal, insofar as it relates to proposed question no.3.

7. Since the appeal has been dismissed on the merit issue, we find, question nos.1 and 2 proposed/raised in the present appeal are academic.

8. Accordingly, the present appeal is also **dismissed**.

(Shiv Shanker Prasad, J.)

(Saumitra Dayal Singh, J.)

Order Date :- 30.11.2023

Sushil/-