Sbw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.1637 OF 2014
WITH
INCOME TAX APPEAL NO.1727 OF 2014

The Commissioner of Income Tax-20 ..Appellant
Versus
Devesh Agarwal ..Respondent

....

Mr. N. C. Mohanty for the Appellant.
None for the Respondent.

....

CORAM: M. S. SANKLECHA &
A. K. MENON, JJ.

DATE : 6th MARCH, 2017

P.C.

1. These two Appeals under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the common order dated 10th April, 2014 passed by the Income Tax Appellate Tribunal (the Tribunal). The common impugned order dated 10th April, 2014 so far as the respondent is concerned relates to Assessment Years 2006-07 and 2007-08. Thus the two appeals by the Revenue.

2. The Revenue has urged the following question of law for our consideration in both the appeals:-

"(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that addition cannot be made under Section 69 by adopting NAV method of valuation for calculating the share market value for the purpose of calculating addition under Section 69 of the Act?"

3. The impugned order of the Tribunal dismissed the Revenue's appeal seeking to tax the respondent-assessee on undisclosed investment under Section 69 of the Act. This undisclosed investment was made in shares of one M/s. Dunstan Goods Pvt. Ltd. to the extent of Rs.2.37 crores for the A.Y. 2006-07 and in shares of M/s. G. K. Fincap Ltd. and M/s. J. N. Fiscal Services Pvt. Ltd. to the extent of Rs.91.36 lakhs for the A.Y. 2007-08.

4. It is the Revenue's contention that Section 69 of the Act would apply to the facts of the present case. The Assessing Officer had in his Assessment Order for the subject Assessment Years had invoked Section 69 of the Act and had brought Rs.2.37 crores and Rs.91.36 lakhs for the two subject years respectively to tax.

5. However, in the appeals for both the Assessment Years the Commissioner of Income Tax (Appeals) (CIT(A)) by common order dated 25th March, 2011 deleted the addition made on account of undisclosed investment in shares. This on the ground that no incriminating material

was found with the respondent-assessee which would support the Revenue's stand that undisclosed investment has been made in the shares of M/s. Dunstan Goods Pvt. Ltd. M/s. G.K. Fincap Ltd. and J. N. Fiscal Services Pvt. Ltd. for the subject Assessment Years.

6. Being aggrieved the Revenue filed two appeals to the Tribunal. By the impugned order dated 10th April, 2014 the Revenue's appeal for both the Assessment Years was dismissed. The imugned order upheld the order dated 25th March, 2011 of the CIT(A). We note that the CIT(A) had, while reversing the view of the Assessing Officer had inter alia, placed reliance upon the decision of the Tribunal in ***M/s. Rupee Finance and Management Pvt. Ltd. v/s. ACIT 119 TTJ 643***. Mr. Mohanty the learned counsel for Revenue very fairly points out that the Revenue had filed an appeal against the order of the Tribunal in M/s. Rupee Finance and Management Pvt. Ltd. (supra) to this Court being Income Tax Appeal No.1208 of 2008. (CIT v/s. M/s. Rupee Finance and Management Pvt. Ltd.). This Court by an order dated 20th October, 2008 had dismissed the Revenue's above appeal, inter alia, on the issue of addition on account of undisclosed investments under Section 69 of the Act for purchase of shares at a price lesser than its market value. No distinguishing features in the present case has been shown to us which would warrant taking a

different view. Moreover, in the absence of any corroborative evidence establishing receipts and payments outside the regular books of Account, it cannot be alleged that investments have been made which are not recorded. Further the Revenue has in this case proceeded to hold that there is investment in shares in excess of what is shown on the basis of pure suspicion i.e. the shares purchased at a price less than its actual valuation. Therefore unless it is first established beyond doubt that there is an investment which is not recorded by the Assessee in its books, no occasion to explain about the nature and source of the investment can arise. The invocation of Section 69 of the Act before establishing investment not recorded in its books of Account, is not justified.

7. In the above view, the proposed question do not give rise to any substantial question of law for both the Assessment Years. Thus not entertained.

8. Accordingly, the appeal is dismissed. No order as to costs.

(A. K. MENON, J.) **(M. S. SANKLECHA, J.)**