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IN THE HIGH COURT OF DELHI AT NEW DELHI

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ITA 475/2017

COMMISSIONER OF INCOME TAX-6

..... Appellant

Through: Mr. Rahul Chaudhary, Senior Standing
Counsel

versus

MOKSHA SECURITIES (P) LTD.

.....Respondent

Through: None

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE PRATHIBA M. SINGH

ORDER

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28.07.2017

CM 22511/2017 (delay)

1. The delay of 58 days in re-filing the appeal is condoned. The application is disposed of.

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2. This is an appeal by the Revenue against the order dated 2nd September, 2016 passed by the Income Tax Appellate Tribunal ('ITAT') in ITA No. 6251/Del/2015 for the Assessment Year ('AY') 2005-06.

3. The Revenue is aggrieved by the concurrent findings of the Commissioner of Income Tax (Appeals) ['CIT (A)'] as well as the ITAT deleting addition of Rs. 60 lakhs under Section 68 of the Income Tax Act, 1961 ('Act') and Rs. 60,000/- under Section 69C of the Act.

4. The assessee filed its return of income for AY 2005-2006 on 31st March, 2006 declaring a loss of Rs.19,44,961/-. The case of the Revenue is that it received the information from the Directorate of Investigation that the Assessee had received accommodation entries of Rs.60 lakhs from Cubic Commercial Resources Ltd. ('CCRL'), a paper company controlled by Mr. S. K. Gupta and others.

5. A search and seizure operation was carried out on the premises of Mr. S.K. Gupta and his associates. On the basis of the information gathered, the AO initiated proceedings under Section 147 of the Act against the Assessee. During the course of the assessment proceedings, the Assessee claimed to have received Rs. 60 lakhs from CCRL through account payee cheque in terms of an Agreement to Sell dated 5th June, 2004. The stand of the Assessing Officer ('AO') was that the Assessee did not furnish any evidence regarding credit worthiness of CCRL. The AO held that the Assessee had failed to rebut the admission by Mr. S.K. Gupta that he was providing accommodation entries to several beneficiaries including the Assessee through a group of paper companies controlled by him. Consequently, the AO held that Rs. 60 lakhs, together with the commission of Rs. 60,000/-, was to be treated as the income of the Assessee under Section 68 read with Section 69C of the Act.

6. The appeal filed by the Assessee was allowed by the CIT (A) by an order dated 16th September, 2015. The CIT (A) observed that although the AO had addressed letters to the bank with which CCRL was maintaining its accounts for the concerned period, the data collected was not mentioned in the

assessment order. Excepting the above exercise, no other enquiry/verification was undertaken by the AO to disprove the claims of the Assessee. It was noted that the entire re-assessment proceedings was based on the information provided by Mr. S. K. Gupta.

7. The CIT (A) also accepted the explanation offered by the Assessee that it had received the above sum from CCRL pursuant to an agreement to sell. The CIT (A) noted that since the Assessee has produced the copy of agreement to sell, the onus has now shifted from the Assessee to the AO. However, the AO has made no attempt to disprove the agreement. The directors of CCRL were not summoned by the AO. No letter was issued to the said company or its principal officers. The AO did not ask the Assessee to produce them either.

8. The CIT (A) noted that the entire addition was based on the statement of Mr. S. K. Gupta. However, a copy of the sworn statement of Mr. S.K. Gupta was not given to the Assessee. The opportunity to cross-examine Mr S.K. Gupta, was also not provided. The CIT (A) also noted that according to the letter written on 30th March, 2012 by the Assistant Commissioner of Income Tax to the AO, one Mr. Aneja ji was the conduit for the accommodation entries. However, the AO did not examine him or record his statement.

9. For the aforementioned reasons, the CIT (A) deleted the additions. Aggrieved, the Revenue went in appeal before the ITAT. The impugned passed by the ITAT reveals that no one appeared on behalf of the Revenue when the appeal was taken up for hearing. The ITAT was constrained to observe in paragraph 5 that notice having been issued to both the parties, no

representative of the Department appeared nor filed any application for adjournment. Nevertheless, the ITAT examined the merit of the case itself and confirmed the finding of the CIT (A) that the additions made by the AO were not justified.

10. Mr. Rahul Chaudhary, Senior Standing Counsel for the Revenue, placed reliance on the decision of the Supreme Court in *Sreelekha Banerjee v CIT (1963) 49 ITR 112* to urge that the onus lay on the Assessee to explain the income from undisclosed sources. In the present case that burden was not discharged by the Assessee. According to him, the CIT (A) failed to notice that the AO had in fact conducted the enquiry and it is the Assessee who is unable to furnish a satisfactory explanation for the credit entries in his account.

11. The Court is unable to agree with the submissions of Mr. Chaudhary. The order passed by the CIT (A) is a reasoned one. It correctly notes that once the Assessee produced the agreement to sell entered into with CCRP, the onus shifted to the AO to make a further enquiry by summoning the directors of CCRL to determine whether the explanation offered by the Assessee was tenable. As further noted by the CIT (A), the AO failed to furnish to the Assessee a copy of the statement of Mr S. K. Gupta, which formed the main basis for making the additions. Mr Gupta was not even offered for cross-examination.

12. In the considered view of the Court, there is no legal infirmity either in the order passed by the CIT (A) or in the impugned order passed by the ITAT which confirmed the same.

13. No substantial question of law arises for consideration. The appeal is accordingly dismissed.

S. MURALIDHAR, J

PRATHIBA M. SINGH, J

JULY 28, 2017
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