

OD – 2

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/143/2017
IA NO:GA/1/2017
(OLD NO. GA/1267/2017)
IN THE MATTER OF :
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS
M/s. AMBITION AGENCIES PRIVATE LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S.SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATED : NOVEMBER 15, 2021.
[Via Video Conference]

Appearance :
Mr. P.K. Bhowmick, Advocate
...for the appellant
Mr. Pranit Bag, Advocate
...for respondent

The Court :- This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act in brevity) is directed against the order dated 9th November, 2016 passed by the Income Tax Appellate Tribunal "C" Bench Kolkata (Tribunal) in I.T.A. No.713/Kol/2011 for the

assessment year 2006-07. The revenue has raised the following substantial questions of law for consideration in this appeal;-

- (a) Whether on the facts and in the circumstances of the case the Learned Tribunal, erred in law in upholding the order of the CIT (Appeals) by deleting the addition of Rs.11,39,00,000/- made by the Assessing Officer under Section 68 of Income Tax Act, 1961 by disregarding that the assessee could not satisfactorily explain the genuineness of the transactions and creditworthiness of the share applicants in question ?
- (b) Whether on the facts and in the circumstances of the case the Learned Tribunal, erred in law in holding that the manner in which the Learned CIT (Appeals) remanded the issue to the Assessing Officer was in consonance with the provision of Section 250(4) of Income Tax Act, 1961 read with Rule 46A of Income Tax Rules, 1962?
- (c) Whether on the facts and in the circumstances of the case conclusion arrived at by the Learned Tribunal in dismissing the Appeal of the revenue, is perverse ?

The assessee filed its return to Income Tax on 8th November, 2006 for the assessment year under consideration 2005-2006. The case was selected for scrutiny and notice under Section 143(2) of the Act was issued. However, notices were issued in terms of Section 142(1) of the act along with the questionnaire. It appears that the inspector of the Income

Tax Department attempted to serve notice, but failed to serve notice at the address, which is stated to be available on record, and thereafter resorted to service by affixation on 1st September, 2008. Thereafter, a fresh notice was issued under Section 142(1) dated September 12, 2008 which was dispatched by registered post, which returned unserved with the postal endorsement "not known". The Assessing Officer found that assessment was getting time barred. Therefore, he proceeded to complete the assessment and passed an order on 8th December, 2008 raising a doubt that none of the shareholders appeared to be benefited. Thereafter, the entire sum of share capital along with the share premium was added back as unexplained cash credit under Section 68 of the Act. Further the order stated that penalty proceedings under Section 271(1)(b) and 271(1)(c) will be initiated separately. Aggrieved by such order assessee preferred an appeal before Commissioner of Income Tax (Appeals)-I, Kolkata, C88 contending that the Assessing Officer committed an error in treating the entire share capital as undisclosed cash credit in the absence of proper opportunity to provide details. Further contentions were also raised before the appellate authority. Further during the hearing of the appeal before the CIT(A) the assessee contended that they were carrying on business at the given address and all correspondence and direct transactions were conducted from the said address and the copy of the said document were filed before CIT(A) along with written submissions. Further the assessee contended that as per

the Income Tax return filed by the assessee the details of the directors along with the address were available with the Assessing Officer and the Assessing Officer could have contacted the directors of the company to ensure compliance of the direction issued in the notices. Further assessee contended that the entire details about assessee company was available on the website and no attempt was made by the Assessing Officer to contact the assessee and resorting to service of notice by affixation is erroneous. The CIT(A) on facts found that Assessing Officer did not make any serious attempt to service notices on the assessee and also accepted the submissions made on behalf of the assessee that though it is alleged that notices could not be served on the assessee in the given address the assessment order and the demand notices were served in the very same address. Therefore, the CIT(A) held an order under Section 144 of the Act was not warranted and proceeded to decide the matter on merits. The CIT(A) also took note of the fact that the assessment was getting time barred and this fact was specifically mentioned by the Assessing Officer in the order of assessment. Therefore to obtain the full facts the CIT(A) thought fit to call for a remand report from the Assessing Officer which was submitted vide letter dated 27th January, 2011. Taking note of the fact placed by the Assessing Officer in the remand report, the CIT(A) noted that after examination of all the share applications the Assessing Officer has come to the conclusion that the transactions with all the share holders were duly cross verified and

found in order and the replies received from all the shareholders were also forwarded by the Assessing Officer along with remand report. Thus taking on record the said remand report and noting that there has been thorough cross verification done by the Assessing Officer, the CIT(A) allowed the appeal deleting the additions. Aggrieved by the same, the Revenue preferred appeal before the Tribunal. The Revenue, sought to sustain the order passed by the Assessing Officer and raised the contention which were canvassed before us in this appeal. The Tribunal after taking note of the fact approved the view taken by the CIT(A) as the appeal filed by the assessee was allowed taking note of the remand report submitted by the Assessing Officer, who in no uncertain terms has stated that the creditworthiness of the share applicants and the genuineness of the transactions stood established. Therefore, the Tribunal upheld the view taken by CIT(A) holding that CIT (A) was fully justified in deleting the addition considering the facts and circumstances of the case. Furthermore, the Tribunal observed that CIT (A) was right in its observation that Assessing Officer did not make attempt to serve notice on the assessee and completed the assessment hurriedly, presumably due to the fact that assessment was getting time barred. Before us the Learned Counsel for the appellant/revenue contended that in the memorandum of appeal filed by the Assessee before the CIT(A) it was contended that assessee did not get adequate opportunity. Therefore, if the CIT(A) was of the view that adequate opportunity was not afforded to

the assessee then the matter ought to have been remanded to the Assessing Officer for a fresh decision and the appeal could not have been allowed. It is further submitted that the same error was committed by the Tribunal. In support of his contention learned Counsel referred to the decision of the Hon'ble Supreme Court in (TIN BOX COMPANY v. COMMISSIONER OF INCOME TAX) 2001(249) ITR Page 216 (SC). We have heard the learned Counsel for assessee on the above submission. At the first blush the submission made by the learned Counsel for the revenue appears to be convincing. However on a close scrutiny we find that the order passed by the CIT(A) does not suffer from any error. The CIT(A) is entitled to exercise the power of the Assessing Officer. Therefore, two options were available before the CIT(A), in the event he found that facts were required to be brought on record. The first of the options available was to remand the matter to the Assessing Officer for fresh consideration. The second option would be to call for the remand report from Assessing Officer by keeping the appeal pending. The CIT(A) exercised the second option which undoubtedly could go to save a lot of time in the matter of completion of the assessment. Upon direction being issued by the CIT(A) calling for a remand report, the Assessing Officer before us treated the matter with more seriousness and after thorough factual exercise reported that genuineness and creditworthiness of the share applicants have been established. In absence of any material available with the revenue to discard the remand report we find the

CIT(A) was fully justified in accepting the remand report in deleting the addition. The decision in TIN BOX COMPANY (*supra*) may not be of assistance to the revenue which is a decision wherein the question was whether an opportunity afforded to an assessee at the appellate level would be sufficient opportunity and it was held that the opportunity at the appellate level cannot be a substitute for an opportunity at the stage of initial adjudication. We find this decision to be wholly inapplicable to the facts and circumstances of the case. As pointed out earlier the Tribunal has also re-examined the facts and rightly accepted the conclusion arrived at by the CIT (A). Thus we find there is no questions of law much less substantial questions of law arising for consideration in this appeal. Consequently, the appeal fails and the same stands dismissed so also the connected applications.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

GH/pkd.