OD – 9

ORDER SHEET

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

IA NO: GA/2/2017 (OLD NO: GA/2133/2017)
In
ITAT/249/2017

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-4
VS.
M/S. CHITRAVALI SALES PVT. LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date: December 2, 2021.

Appearance :
Mr. D. Chowdhury, Advocate
Mr. Madhu Jana, Advocate
...for the appellant

Mr. Avijit Dey, Advocate
Mr. Subash Agarwal, Advocate
...for the 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 10th August, 2016 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (Tribunal) in ITA Nos. 116/Kol/2010 for Assessment Year 2006-07. The Revenue has raised the following substantial questions of law for consideration: -

i) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal, "B" Bench, Kolkata was justified in deleting the addition of Rs.7,75,34,884/- being advances received from 470 persons on account of alleged trading of sand whose identity has not been proved ?

ii) Whether on the facts and in the circumstances of the case the order passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata was perverse in overlooking the relevant material brought forward by the Income Tax Officer, Ward 3(4) Kolkata in its order dated 30th December, 2008 on record as evidence to establish that the impugned advances was bogus in nature ?

The short question involved in the instant case is whether the assesee had discharged the onus cast upon him in explaining the nature of source of credit, the identity of the creditors, genuineness of the transactions and creditworthiness of the parties. The Tribunal after considering the fact found that the amount received by the assessee from 470 persons is only a trade deposit and those persons are customers of the assessee which had been adjusted against the supplies of sand and sales have been booked by the assessee for the Assessment Year 2007-08 which was accepted by the assessing officer and the assessment was completed. Therefore, the Tribunal held that the provisions of Section 68 of the Act cannot be invoked in respect of trade deposit received from the customers. The Tribunal also took note of the decision of this Court in the case of *CRYSTAL NETWORKS*

*(P) LTD Vs. CIT in ITA No.158 of 2002* dated 29th July 2010. We find that the Tribunal on facts was satisfied that the provisions of Section 68 would not stand attracted and the fact that assessing officer had accepted the return filed by the assessee for the Assessment Year 2007-08 where the trade advances were duly squared off by the supply of sand by the assessee to the customers and the sales were booked in the said Assessment Year 2007-08 and this has been accepted by the assessing officer vide proceeding u/S. 154 of the Act while granting credit of T.C.S. under Section 206(C)(4) of the Act. Thus we find that there is no question of law, much less substantial questions of law arising in this appeal.

Accordingly the appeal stands dismissed. Consequently the application also stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

GH/RS.