OD-44

ITAT/318/2017
IA No.GA/1/2017 (Old No.GA/2962/2017)

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

M/S. METROCITY DEVELOPER PVT. LTD. & ANR.

-Versus-

INCOME TAX OFFICER, WARD-1(2), KOLKATA & ORS.

Appearance:
Mr. Subash Agarwal, Adv.
...for the appellant.

Mr. P. K. Bhowmick, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 25th November, 2021.

The Court : This appeal by the assessee filed under Section 260A of the Income Tax Act (the 'Act' in brevity) is directed against the order dated 6th March, 2017 passed by the Income Tax Appellate Tribunal, C-Bench, Kolkata (the 'Tribunal') in ITA No.545/Kol/2014 for the assessment year 2008-09.

The assessee has raised the following substantial questions of law for consideration:

"a) Whether on the facts and circumstances of the case, the Learned Tribunal is correct in holding that the alleged lack of proper enquiries as to the issue of share

capital/premium in the course of proceedings under Section 147 is to be considered as erroneous and prejudicial to the interest of revenue even though the reopening was done for the specific purpose of escapement of miscellaneous income of ₹12,500/- which was not property account for due to mistake?

b) Whether on the facts and circumstances of the case, the Learned Tribunal is correct in not appreciating the fact that the reassessment order passed by the Assessing Officer is not erroneous as well as not prejudicial to the interest of the revenue on the issue of share capital/premium when no addition can be made under Section 68 of the Income Tax, 1961 in view of the judgments of the Hon'ble Supreme Court in case of Lovely Exports (P) Ltd. reported in 319 ITR (St.)5?

c) Whether on the facts and circumstances of the case, the Learned Tribunal is correct in holding that the Commissioner of Income Tax under Section 263 can set aside the assessment order and direct the Assessing Officer to conduct a thorough enquiry, notwithstanding the jurisdiction of the Assessing Officer in making enquiries on the issues or matters as he considers fit in terms of Section 142(1) and 143(2) of the Act?

d) Whether the purported finding of the Learned Tribunal that the issue of share capital/share premium has not been properly looked into or investigated by the Assessing Officer is wholly perverse and/or is based on no material and/or is based on mere conjectures and surmises?

e) Whether on the facts and circumstances of the case, the Learned Tribunal was justified in upholding the proceedings under Section 263 inspite of the fact that the proceedings were concluded in gross violation of the principles of natural justice and/or improper service of show cause notice?"

We have heard Mr. Subash Agarwal, learned Counsel for the appellant and Mr. P. K. Bhowmick, learned counsel for the respondent/revenue.

Learned counsel for the appellant fairly submitted that identical issue and questions of law raised above were considered and answered against the assessee by this Court in its decision reported in 386 ITR 162(Cal) [Raj Mandir Estates (P) Ltd. versus Principal Commissioner of Income Tax]. Following the said decision, the present appeal (ITAT/318/2017)stands dismissed in the above-mentioned substantial questions of law are answered against the assessee.

The connected application for stay, IA NO.GA/1/2017(Old NO.GA/2962/2017) also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s.