OD-16

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

ITAT/3/2020
IA NO:GA/2/2020 (GA/320/2020)
PRINCIPAL COMMISSIONER OF INCOME TAX– 5, KOLKATA
VS.
M/s. L D S CITY PROJECTS PVT. LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK

Date : 21st July, 2022.

Appearance :-
Mr. Aryak Dutta, Adv.
....for appellant.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act for brevity) is directed against the order dated 10th May, 2019 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (Tribunal) in I.T.A. No. 1767/Kol/2017 for the assessment year 2012-13. The revenue has raised the following substantial questions of law for consideration :-

i) Whether explanation offered by the assessee in respect of share application for the sum of Rs.50,00,000/- and unsecured loan for the sum of Rs.3,15,00,000/- was satisfactory as per section 68 of the said Act to the extent of the genuineness of transaction, creditworthiness of the company, nature and source of such sum so credited to the assessee's account ?

ii) Whether the Learned Tribunal was justified in upholding the deletion made by the Commissioner of Income Tax (Appeals) on account of share application money for Rs.50,00,000/- and unsecured loan for a sum of Rs.3,15,00,000/-?

We have heard Mr. Aryak Dutt, learned Standing Counsel appearing for appellant. Though notice has been served on the respondent/assessee, none appears for respondent/assessee. Even when the application filed under Section 5 of the Limitation Act was heard and allowed under Section 362 of the Income Tax Act, none appeared for respondent/assessee. Thereafter, we proceeded to take up the matter for consideration after having heard the learned standing Counsel for appellant.

The assessee had filed its return of income on 25th September, 2019 showing total income as nil. The case was selected for scrutiny and notice under Section 143(2) of the Act was issued and thereafter under Section 142(1) of the Act was issued and two directors of the respondent company had appeared before the assessing officer and the case was discussed. The assessing officer noted from the balance sheet that Rs.50 lakh was raised as share application money and a short term unsecured loan of Rs.3.15 crore was obtained during the financial year 2011-12 from M/s. K.G. Construction Private Limited. The assessing officer noted that the said company was registered with the Registrar of Companies, Mumbai and it was initially a partnership firm which came into existence on 1st April, 2010 with the capital of Rs.20,000/- contributed by two partners in equal measure and in the financial year 2010-11 the capital account of the firm increased to Rs.42,15,028/- when the firm had made no profit. The assessing officer did not agree with the stand taken by the assessee and held the entire share application money of Rs.50 lakh and unsecured loan of Rs.3.150 crore as unexplained cash credit under Section 68 of the Act and added back the same to the income of the assessee. The assessee preferred appeal before the Commissioner of Income Tax (Appeals) 5, Kolkata [CIT(A)]. The appeal was allowed by order dated 19th May, 2017.

Aggrieved by the same revenue preferred appeal before the Tribunal. We find from the order passed by the learned Tribunal, the findings recorded by the CIT(A) on the two issues were extracted by the Tribunal and it has been stated that the departmental representative could not controvert the factual findings. Before us the revenue would vehemently contend that the Tribunal has not assigned any independent reasons as to why it agreed with the CIT(A) and that no concession was permitted to be granted on behalf of the revenue and the department had preferred the appeal before the learned

Tribunal to contest and challenge the correctness of the order passed by the CIT(A). Further, it is pointed out that in the assessment order the entire *modus operandi* has been clearly brought out and how the money is routed back to the assessee's account through another bank. The learned standing Counsel has referred to the findings recorded by the assessing officer in his order dated 29th March, 2015 with a view to impress upon us that the assessee had used various shell companies which had no creditworthiness as a conduit to route unaccounted money into its books. Further, it is submitted that the assessing officer has clearly recorded a finding as to how the explanation offered by the assessee, in his opinion, was not satisfactory. Unless and until such opinion of the assessing officer is held to be totally wrong, the order could not have been interfered with. In support of his contention the learned Standing Counsel referred to the decision in the case of *A. Govindarajulu Mudaliar Vs. CIT*; [1958] 34 ITR 807 and the decision in *CIT Vs. Devi Prasad Viswanath Prasad* ; [1969] 72 ITR 194(SC). Further, the learned Standing Counsel placed reliance on the decision of the Hon'ble Supreme Court in *CIT Vs. Durga Prasad More*; 82 ITR 540 (SC) and *Sumati Dayal Vs.CIT* ; [214 ITR 801] for the proposition that the true nature of a transaction has to be ascertained in the light of the surrounding circumstances and by applying the test of human probabilities.

On going through the order passed by the Tribunal, we find that no independent finding has been recorded by the Tribunal as to how the Tribunal was satisfied that the findings recorded by the CIT(A) do not call for any interference. There is nothing on record to indicate that any concession was permitted by the revenue to be made before the Tribunal. Considering the fact that the revenue has been contesting the matter, in our view, the learned Tribunal being the last fact finding authority, in the fitness of things, should record reasons to support its conclusion. Since we find such course having not been adopted by the learned Tribunal, we are inclined to interfere with the order passed by the learned Tribunal and remand the matter back to the learned Tribunal for fresh consideration.

In the result, the appeal filed by the revenue is allowed. The order passed by the learned Tribunal is set aside and the matter is remanded to the learned Tribunal to decide the case afresh on merits and in accordance with law and pass a reasoned order after affording an opportunity of hearing to the revenue as well as to the assessee.

Consequently, the substantial questions of law are left open.`

The application for stay stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

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