

Form No.(J2)

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

**Present :**

THE HON'BLE JUSTICE T.S. SIVAGNANAM

A N D

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

IA NO.GA/2/2018  
(Old No.GA/574/2018)  
ITAT/57/2018

PRINCIPAL COMMISSIONER OF INCOME TAX-3, KOLKATA  
-Versus-  
SHRI KANTI PRASAD KEDIA

*For the Appellant: Mr. Smarajit Roychowdhury, Adv.  
Mr. Manabendranath Bandopadhyay, Adv.*

*For the Respondent: Mr. Nageshwar Rao, Adv.  
Mr. Avra Majumdar, Adv.  
Sk. Md. Biswal Hossain, Adv.  
Mr. Shatnik Chakraborty, Adv.  
Ms. Viyushi Rawat, Adv.*

Heard on : 15.02.2022

Judgment on : 15.02.2022

**T. S. SIVAGANANAM, J.** : 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 31<sup>st</sup> March, 2017 passed by the Income Tax Appellate Tribunal, Kolkata "B" Bench

(the 'Tribunal' in short) in IT(SS)A No.104/Kol/2008 for the block period 1.4.1988 to 12.03.1999.

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

- "(a) *Whether on the facts and the circumstances of the case, the Learned Tribunal has erred in law as well as on fact in deleting an amount of Rs.7.10 crores which was voluntarily disclosed by the assessee himself in his return of income for the block period from 1<sup>st</sup> April, 1988 to 12<sup>th</sup> March, 1999 ?*
- (b) *Whether on the facts and the circumstances of the case, the Learned Tribunal has erred in law as well as on fact in confirming the decision of the CIT(A) regarding the deletion of the addition of Rs.73,04,75,000/- made by the assessing officer towards contribution of share capital by the assessee to 117 companies out of undisclosed income ?*
- (c) *Whether on the facts and the circumstances of the case, the Learned Tribunal has erred in law as well as on fact in deleting the addition of Rs.10,29,45,776/- towards the cash deposited in various bank accounts of the proprietary concerns of the benamdar of the assessee for which the assessee could not substantiate the source of deposit and even the addition was confirmed by the CIT(Appeals) ?*
- (d) *Whether on the facts and the circumstances of the case, the Learned Tribunal has erred in law as well as on fact in deleting the addition of*

*Rs.10,00,00,000/- towards income out of shares dealing for assessment year 1992-93 which was confirmed by CIT(A) and which was in fact stated by the assessee himself as his income during recording of his statement ?*

- (e) Whether on the facts and the circumstances of the case, the Learned Tribunal has erred in law as well as on fact in deleting Rs.7.10 crores which was in fact the returned income of the assessee in response to notice under Section 158BC (a)(ii) of the Income Tax Act, 1961 ?"*

We have heard Mr. Smarajit Roychowdhury, learned counsel assisted by Mr. Manabendranath Bandopadhyay, learned advocate for the appellant/revenue and Mr. Nageshwar Rao, learned counsel assisted by Mr. Avra Majumdar, learned Advocate for the respondent/assessee.

First we take up the substantial questions of law (a) and (e) together as suggested by the revenue. These pertain to deletion of an amount of Rs.7.10 crores which was disclosed by the assessee in the return of income filed pursuant to notice under Section 158BC(a)(ii) of the Act. In fact, this issue was not raised before the Commissioner of Income Tax (Appeals)-VI, Kolkata (CIT(A) when the assessee challenged the order of assessment dated 28<sup>th</sup> March, 2001. However, the assessee was on an appeal before the tribunal on the said issue. The tribunal considered the

contentions of either side and set aside the finding of the assessing officer with regard to the addition of Rs.7.10 crores and restored the matter back to the assessing officer to examine the seized materials and re-compute the income of the assessee for the block period. The learned counsel for the respondent/assessee submits that the order passed by the tribunal has been given effect to and the assessing officer has passed an order which is adverse to the interest of the assessee and the assessee is pursuing further remedies against the said order. Thus, in our considered view, there is no substantial question of law arising for consideration with regard to the questions suggested in (a) and (e) above. Therefore, the same are rejected.

The other three substantial questions of law also pertain to deletion of certain additions which have been made towards contribution of share capital by the assessee to 117 companies; deletion of addition of Rs.10,29,45,776/- towards cash deposits and deletion of addition of Rs.10 crores towards income out of shares. These issues have been dealt with by the tribunal as mentioned below:

So far as substantial question of law (b) is concerned, the discussion in the order passed by the tribunal is in paragraph 4. On reading of the said paragraph, we find that the tribunal has re-appreciated the facts which were available on record while

affirming the order passed by the CIT(A). In fact, it has rendered a finding that the assessing officer without bringing any evidence to show that the companies which are legal entities and assessed to tax every year have not disclosed the paid-up or less paid-up capital, the amount of paid-up capital which have been disclosed in its balance-sheet every year. There are other findings of fact as well. Thus, we find that there is no substantial question of law arising on the said issue. Accordingly, the substantial question of law (b) as suggested stands rejected.

With regard to substantial question of law (c) is concerned, the discussion is in paragraph 6 of the order passed by the tribunal. After analysing the facts, the tribunal concluded that addition made by the assessing officer is not on the basis of evidence or material to even remotely suggest that the cash deposited in bank accounts belongs to the assessee and the addition was totally contrary to the findings recorded at various places in the assessment order and accordingly deleted the addition. Here also we find that a thorough investigation of the factual position has been done by the tribunal while granting relief to the assessee and we do not find any substantial question of law arising for consideration on the said issue.

The next issue concerns the deletion of addition of Rs.10 crores which is suggested as substantial question of law (d) above. The tribunal has considered the same and once again re-appreciated the factual position and that the assessing officer himself has rendered a finding that the assessee is not a man of means and he has also accepted that he has engaged only in the name lending and providing accommodation entries for a small commission. Further, factual analysis have also been made and it has been held that addition based on statement alone which has been recorded when the assessee was mentally disturbed cannot be sustained. In this regard it will be beneficial to note the circular issued by the CBDT dated 10<sup>th</sup> March, 2003 wherein the Board has stated that confession during the course of search, seizure and survey operations did not serve any useful purpose and the assessing officers were advised that there should focus and concentrate on collection of evidence of income which leads to information on what has not been disclosed or is not likely to be disclosed before the Income Tax Department. Further, it has been mentioned that while recording statement during the course of search and seizure operation, no attempt should be made to obtain confession as to the undisclosed income. Thus, we are of the clear view that no question of law as suggested in substantial question of law (d) arises for consideration on the said issue as well.

In the result, we find that there is no question of law much less substantial question of law arises for consideration in this appeal. Accordingly, the appeal stands dismissed.

The connected application for stay being GA/2/2018 stands dismissed.

**(T.S. SIVAGNANAM, J.)**

I agree.

**(HIRANMAY BHATTACHARYYA, J.)**