

OD-27

ITAT/98/2021
IA No.GA/2/2021

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

PRINCIPAL COMMISSIONER OF INCOME
TAX, CENTRAL-1, KOLKATA

-Versus-

M/S. ANMOL STAINLESS PVT. LTD.

Appearance:

Ms. Sucharita Biswas, Adv.
Mr. Soumen Bhattacharyya, Adv.
...for the appellant.

Mr. Avratosh Majumdar, Sr. Adv.
Mr. V. Tibrewal, Adv.,
Mr. Abhra Majumdar, Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 9th February, 2022.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 19th July, 2019 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the 'Tribunal' in short) in ITA No.1862/Kol/2017 for the assessment year 2012-13.

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

- (i) *Whether the Learned Tribunal erred in ignoring that explanation offered by the assessee in respect of share capital/share application money and premium was not satisfactory as per Section 68 of the said Act to the extent of the genuineness of transaction, credit worthiness of the company, nature and source of such sum so credited to the assessee's account ?*
- (ii) *Whether Learned Tribunal erred in confirming the order of Ld. CIT(A), Kol in which Ld. CIT(A), Kol allowed the appeal of the assessee without remanding the issue, guided the AO to verify the credentials of the persons, which tantamounts to setting aside the case, but the same is not legally permissible ?*

We have heard Ms. Sucharita Biswas learned counsel assisted by Mr. Soumen Bhattacharyya, learned Advocate for the appellant/revenue and Mr. Avratosh Majumdar, learned senior counsel assisted by Mr. V. Tibrewal and Mr. Abhra Majumdar, learned Advocates for the respondent/assessee.

The revenue is before us by way of this appeal contending that the Commissioner of Income Tax (Appeals)-20, Kolkata (in short CIT(A)), thereby reversing the order passed by the assessing officer dated 23rd March, 2015 by which the entire amount received during the year under consideration which includes share capital and premium was added as unexplained credit in the income of the assessee invoking Section 68 of the Act. The order passed by the

CIT(A) allowing the assessee's appeal has been affirmed by the tribunal by the impugned order. The assessing officer while completing the assessment by order dated 23rd March, 2015 under Section 144/143(3) of the Act, came to the conclusion that the share subscriptions were collected as part of pre-meditated plan conceived and executed with connivance or involvement of the assessee company. The assessee challenged the said order before the tribunal on several grounds. Firstly, on the ground that the assessment order could not have been passed both under Section 144 and 143(3) of the Act. The CIT(A) on examining the facts found that the assessee had complied with the notice issued by the assessing officer and also filed written submission and, therefore, the assessment order could have been passed only under Section 143(3) of the Act.

The next aspect which was examined by the CIT(A) was whether the assessee was able to establish the identity or credit worthiness of the share-holders which according to the assessing officer was not established. After taking note of the submission made by the assessee, more particularly that the investments have been made by the assessee's own sister concern and group companies, the CIT(A) directed the assessing officer to verify the claim of the assessee that the investments have been made from the assessee's own sister concern/group companies having mostly common directors and, to treat the appeal filed by the assessee to be

allowed on those grounds in case the aforesaid claim is found correct.

We find from the order passed by the tribunal that the assessing officer has complied with the direction issued by the CIT(A) and has given effect to the order and no adverse finding has been recorded by the assessing officer and accordingly the addition was deleted. Therefore, the tribunal would have been well justified in rejecting the revenue's appeal which was filed against the order passed by the CIT(A). Nevertheless the tribunal took upon itself the exercise to examine the factual position probably realising that they are the last fact finding authority in the hierarchy of authorities provided under the Act. After making an elaborate factual exercise the tribunal examined the credit worthiness of the investors and found that three share applicants were income tax assesseees; they were filing return of income; share application form and allotment letter were available on record; the share application money was paid by the account payee cheques; details of bank account belonging to the share applicants and their bank statements were available; the assessing officer did not find any amount to be deposited in cash; the share applicants have substantial credit worthiness; the share applicants have common directors; all the directors are income tax assesseees and all the three share applicants are sister concern. Thus, the tribunal was satisfied that the credit worthiness and

the genuinity of the investments have been sufficiently established by the assessee not only before the CIT(A), but also before the assessing officer on the matter being sent back to the assessing officer pursuant to the order passed by the CIT(A).

Thus, we find that there is no question of law much less substantial question of law arising for consideration in this appeal. Accordingly, the appeal is dismissed.

Consequently, the connected application for stay (IA No.GA/2/2021) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)