OD-35 & 36

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

IA NO. GA/2/2021
In ITAT/116/2021
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-1,KOLKATA
Vs
M/S. BOHRA G AND N N BROTHERS PRIVATE LIMITED

&

IA NO. GA/1/2021
In ITAT/116/2021

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-1,KOLKATA
Vs
M/S.BOHRA G AND N N BROTHERS PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
And
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 7TH February, 2022

Appearance:
Mr. P. K. Bhowmick, Adv.
Mr. Arunava Ganguly, Adv.
...For the Appellant

Mr. Agnibesh Sengupta, Adv.
Mr. Siddharth Das, Adv.
Ms. Pritha Basu, Adv.
...For the Respondent

The Court : There is a delay of 748 days in filing the appeal. Though there is no sufficient cause shown by the appellant to condone the delay, yet taking note of the submission made by Mr. Agnibesh Sengupta, learned Counsel appearing for the respondent that the assessee has availed the benefit of direct tax Vivad-se-Viswas Scheme and Form IV has been issued, we exercise the discretion and condone the delay.

Accordingly, IA GA No.1 of 2021 stands disposed of.

This appeal of revenue filed under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 28th February, 2019 passed by the Income Tax Appellate Tribunal, Kolkata "A" Bench (the 'Tribunal' in short) in IT(SS)A No.89/Kol/2017 for the assessment year 2010-11.

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

> *"(i) Whether on the facts and in the circumstances of the case the Learned Tribunal committed substantial errors of law in deleting the addition made Under Section 68 of the Income Tax Act, 1961 by the Assessing Officer on Account of unexplained share application money received?*
>
> *(ii) Whether on the facts and circumstances of the case the Learned Tribunal failed to distinguish the instant case from CIT Vs. Kabul Chawla reported in 380 ITR 573 (Del.) where absolutely no incrementing documents were found and additions were made as deemed dividend, whereas in this case additions were made under section 68 of Income tax Act, 1961 based on statement by entry operators, cash trail, layering of unaccounted cash money through various bogus paper companies, which*

were unearthed during search based on prima facie evidences of clandestine operations adopted by assessee to evade tax ?

(iii) Whether on the facts and in the circumstances of the case and in law, the Learned Income Tax Appellate Tribunal has failed to appreciate that a Special Leave Petition has been admitted by the Hon'ble Supreme Court [in (2017) 79 Taxman 115 (SC) CIT-7 Vs. RRJ Securities LTD.] on the issue/ judicial pronouncements which has been overlooked by the learned Income Tax Appellate Tribunal ?

(iv) That on the facts and in the circumstances of the case, the Hon'ble ITAT has erred in not interfering in the decision of the Ld. CIT(A), in which the LD. CIT(A) has allowed the appeal of the assessee observing that additions made by the AO in the assessment order passed u/s 153A/143(3) are not based on any incriminating documents/papers seized during the search operation, without calling for remand report/comments."

We have heard Mr. P. K. Bhowmick, learned standing Counsel appearing for the appellant/revenue and Mr. Agnibesh Sengupta, learned standing Counsel appearing for the respondent /assessee.

The learned Counsel for the respondent/assessee submits that the assessee has availed the benefit of direct tax Vivad-se-Viswas scheme and Form IV dated 27th October, 2021 has been issued to the assessee. Copy of the said Form IV has been placed before us.

Thus, recording the said submission, the appeal (ITAT 116/2021) stands disposed of on the ground that the assessee has availed the benefit of Vivad-se-Viswas Scheme. Consequently, the substantial questions of law are left open.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.De/S.Das