

ORDER SHEET
IA NO. GA/2/2017
(Old No: GA/1695/2017)
In ITAT/192/2017
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMM OF INCOME TAX 1, KOL
Vs
M/S SURYA ALLOYS INDUSTRIES LTD

BEFORE:

The Hon'ble JUSTICE T. S. SIVAGNANAM

And

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 7TH February, 2022

Appearance:
Mr. Debasish Chowdhury, Adv.
...For the Appellant

Mr. J. P. Khitan, Sr. Adv.
Ms. Rajshree Kajaria, Adv.
Mr. Pratyush Jhunjhunwala, Adv.
Mr. Uttam Sharma, Adv.
...For the Respondent

The Court : This appeal of revenue filed under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 10th August, 2016 passed by the Income Tax Appellate Tribunal, Kolkata "B" Bench (the 'Tribunal' in short) in ITA No.2253/Kol/2013 for the assessment year 2010-11.

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

"(i) Whether on the facts and in the circumstances of the case the Ld. Tribunal has erred in law as well as in fact in confirming the order of the

CIT (Appeals) deleting the addition of Rs.12.05 Crore made under Section 68 of the I.T. Act, 1961, by disregarding and ignoring that on 31.3.10 the share applicants did not have the required money to subscribe the shares of the assessee company and the transactions in question were mere paper transaction and creditworthiness of the parties did not exist ?

(ii) Whether on the facts and in the circumstances of the case the LD. Tribunal has erred in law as well as in fact in confirming the order of the CIT (Appeals) deleting the addition of Rs.25.36 lakhs made Under Section 14A of the I.T. Act, 1961, read with Rule 8D of the Income Tax Rule 1962, by disregarding that the assessee failed to discharge the burden of proof that no amount of interest bearing funds were utilized for making the investments fetching exempt income ?

(iii) Whether on the facts and in the circumstances of the case the Ld. Tribunal has erred in law as well as in fact in confirming the order of the CIT (Appeals) deleting the addition of Rs.44.29 lakhs made Under Section 36(1) (III) of the I.T. Act, 1961, by disregarding that the assessee failed to adduce any material on records to prove that no loan funds were deployed for meeting the cost of capital work in progress ?”

We have heard Mr. Debasish Chowdhury, learned standing Counsel appearing for the appellant/revenue and Mr. J. P. Khaitan, learned Senior Counsel instructed by Ms. Rajshree Kajaria, learned Counsel and Mr. Pratyush Jhunjhunwala, learned Counsel appearing for the respondent /assessee.

The first question of law which has been suggested by the revenue is with regard to the deletion made under Section 68 of the Act by the

Commissioner of Income Tax (Appeals) (I) [CIT(A)] vide order dated 1st May, 2013. We have perused the findings recorded by the CIT(A) more particularly paragraph 3.3 of the said order and we find that the CIT(A) has examined the entire facts and pointed out that the share application monies were received by way of account payee cheques through proper banking channel and these were evidenced from the banks statement of the appellant and the share applicant and both the share holders are regular income tax assesseees. Further, with regard to the explanation offered regarding the source of tax, the CIT(A) found that the explanation to be satisfactory as they were duly supported by documents which were discredited by the Assessing Officer though addition was made under Section 68 of the Act. Furthermore, the conclusion arrived at by the Assessing Officer to treat the transaction solely based on the fact that there was actually two other companies functioning out of the same address, the CIT(A) rightly observed that mere fact that three separate legal entities share the common address did not make them as sham companies or paper companies especially when there were records produced to show the entire worth of these companies and the transaction done by them. Furthermore, the Tribunal considered as to what was the material brought on record by the assessee during the course of assessment proceeding. It noted that the Assessing Officer on one hand stated that the share application cheques were actually encashed by the assessee for a subsequent financial year. The Tribunal found that there is nothing wrong about the same and merely because there was a time gap between the receipt of cheques and its encashment and in the interregnum there was change of financial year cannot make a transaction as a sham transaction.

Furthermore, the CIT(A) noted that the Assessing Officer had admitted that the share application money was obtained, maintained or improved the applicant debt equity ratio so as to lower the interest burden. Thus, we find that the entire matter is factual and the facts having been analysed by the CIT(A), relief was granted to the assessee. When the revenue carried out the matter in appeal, a similar case was shown by the Tribunal to examine as to whether the finding of the CIT(A) on facts was justified. After satisfying itself about the same, the Tribunal dismissed the revenue's appeal. Thus, we find that there is no substantial question of law arising for consideration on the said issue.

The second application which has been suggested to us is with regard to the disallowance under Section 14A of the Act. This aspect of the matter has been dealt with by the CIT(A) in paragraphs 4.3 and 4.4 of its order. The CIT(A) noted that for the investments made in the earlier year their department has accepted the assessee's explanation that the investments were made out of own funds and there is no question of taking a contrary stand for the year under consideration. This factual position was verified and affirmed by the Tribunal. Therefore, we do not find any substantial question of law arising for consideration on the said issue.

The third question suggested in this appeal is with regard to deleting the addition made under Section 36(1)(III). This has been considered by the CIT(A) in paragraphs 5.4 and 5.5 of its order. After analysing the factual position, the CIT(A) held that the Assessing Officer has not pointed out any inaccuracy or infirmity in the unit-wise accounts maintained by the assessee or the allocation of interest made by the assessee inter se among the units. Further, the assessee

had identified the specific sources of funds used for meeting in the cost of capital. Furthermore, the CIT(A) held that in the absence of any material brought on record by the Assessing Officer that borrowed funds have been additional investment to meet the capital, the Assessing Officer was not justified in allocating interest costs. This finding of the CIT(A) was examined by the Tribunal and it concurred with the CIT(A) on facts. Therefore, we are convinced that there is no substantial question of law arising for consideration in this appeal on this issue.

In the result, the appeal (ITAT No.192 of 2017) filed by the revenue stands dismissed on the ground that no substantial question of law much less the question of law arises for consideration.

With the dismissal of this appeal, the stay application (GA No.2 of 2017) stands closed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)