OD-3

ITAT/241/2017
IA NO: GA/1/2017, (Old No.GA/2102/2017)
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VERSUS
M/S. COMMAND CONSTRUCTIONS PVT. LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 21st January, 2022.
[VIA VIDEO CONFERENCE]

Appearance:-

Mr. Smarajit Roy chowdhury, Adv.
... For Appellant
Mr. J.P. Khaitan, Sr. Adv.
Ms. Swapna Das, Adv.
Mr. Siddharth Das, Adv.
... For Respondent

The Court : 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 15.3.2017 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata [Tribunal] in ITA/2271/Kol/2013 for the assessment year 2008-09. The revenue has raised the following substantial questions of law for our consideration.

i. Whether on the facts and in the circumstances of the case the learned Tribunal was justified in law in confirming the decision of the CIT[A] by quashing the notice issued under Section 148 of the said Act ?

ii. Whether on the facts and in the circumstances of the case the learned Tribunal was justified in law to delete the addition of Rs.96,37,85,635/- on account of short term capital gain which is contrary to the provision of section 45(3) of the said Act despite the fact that the capital gain in the instant case arose from the transfer of land to the partnership firm by way of capital contribution as the asset was converted to the capital asset by the partnership firm on 31.03.2008 ?

iii. Whether on the facts and in the circumstances of the case the learned Tribunal was justified in law to delete the addition of Rs.37,03,36,1878/- on account of re-valuation profit despite the fact that no tax was paid either by the assesses of the partnership firm on the said profit ?

iv. Whether on the facts and in the circumstances of the case the learned Tribunal was justified in ignoring the sham arrangement between the group concerns wherein the nomenclature of the impugned asset was intentionally shown as stock-in-trade and under valued to escape the provision of Section 45(3) despite the fact it reveals from the audited accounts for the year in question than in the instant case the assessee taken over by the firm was nothing but a capital asset ?

We have heard Mr. Smarajit Roy Chowdhury, learned senior standing counsel for the appellant and Mr. Khaitan, learned senior counsel assisted by Ms. Swapna Das and Mr. Siddharth Das, learned counsel for the respondent. Identical substantial questions of law were considered by us in ITAT/250/2017, ITAT/239/2017 and ITAT/164/2017 and by the common judgment dated 18.1.2022 those appeals filed by the revenue have been dismissed on the ground that no substantial question of law arises for consideration. In the light of the said decision, this appeal also needs to be dismissed on the same line. Accordingly, following the judgment dated 18.1.2022 in ITAT/250/2017, the appeal being ITAT/241/2017 stands dismissed on the ground that no substantial question of law arises for consideration.

The application being IA NO: GA/1/2017, (Old No.GA/2102/2017) also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

pkd/S.Pal
AR(CR)