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

ITAT/146/2021
IA No.GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX-9, KOLKATA
VS.
KAUSHIK DAS

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK
Date : 20th July, 2022

<u>*Appearance*</u> :
Mr. Prithu Dudheria, Adv…for the appellant.

Mr. Arijit Chakraborty, Adv,
Mr. Nilotpal Chowdhury, Mr. Akash dutta, Mr.
Prabir Bera, Advs…for respondent.

The Court : This appeal by the revenue filed under section 260A of the Income Tax Act, 1961 [the Act, for brevity] is directed against the order dated 1st October, 2019 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata in ITA No.1678/Kol/2017 relating to assessment year 2007-08, ITA No.1679/Kol/2017, ITA No.1680/Kol/2017 for the assessment years 2007-08, 2008-09, and 2009-10.

The revenue has raised the following substantial question of law for consideration.

i) Whether on the facts and in the circumstances of the case the ITAT erred in law in upholding CIT[A]'s order which was passed overlooking the fact that the sources of money deposited in the banks accounts of the assessee, were not at all explained at any stage of the Income Tax proceedings giving rise to forming decision on extraneous materials which gives to the vice of flaw in the decision making process ?

We have heard learned counsel for the parties.

We are of the considered view that no substantial question of law arises for consideration in this appeal. We support such contention with the following reasons.

Admittedly, the assessments were completed by the assessing officer for all the three assessments years under section 144 read with section 147of the Act. Aggrieved by the same, the assessee preferred appeal before the Commissioner of Income Tax [Appeals]-9, Kolkata [CIT[A]]. During the pendency of the appeal the Commissioner had called for a remand report**.** Before submitting the remand report the assessee was given an opportunity to make submission on the proposed report of the assessing officer. The assessee made submissions and in the remand report the assessing officer has affirmed that the bank account of the assessee have been used for the purpose of providing accommodation entry to various companies. Accepting such stand, and also the stand of the assessee receiving commission of making such accommodation entry the addition was restricted to 0.5% for the commission earned. The following is the finding recorded by the CIT[A] :

> "As regards Grounds no.5,6 and 7 which contain the merit of the appeal and is against the addition Rs.4,29,25,000/-, I find that the three bank accounts pertaining to the three proprietorship firms run by the appellant have deposits of cash, cheque and then withdrawal of sums so deposited in form of cheques issue to various beneficiaries. Such cheques

have been issued to the beneficiaries on the subsequent day of the deposit itself. The bank accounts so mentioned by the AO find mention in the status report so sent by the AO along with the remand report. The status report given by the investigation wing very clearly mentions that such bank accounts have been used for the purpose of providing accommodation entry to various companies so mentioned in remand report and to name a few i.e. Sarowar Goods Pvt. Ltd., Chitra Goods Pvt. Ltd., Kingsuk Niwas Pvt. Ltd. and so many others as mentioned therein. The status report very clearly indicates that the bank accounts have been used for providing accommodation entry to such company/concern. The appellant had itself admitted that it had earned commission @ 0.20% - 0.25%. The contention of the appellant is acceptable in the background and the light of the remand report and the status report so placed before me and I concur with the submission so made in such respect and restrict the addition to 0.5% of the addition so made i.e. Rs.2,14,625/- for the commission earned on such sum. Hence, these grounds of the appellant are partly allowed."

The revenue carried the matter on appeal. The tribunal after taking note of the factual position affirmed the view taken by the CIT[A] based upon the finding given in the remand report. The tribunal also referred to two of the decisions of the Coordinate Bench of the tribunal while dismissing the appeal filed by the revenue. It has not been shown to us that the decisions of the Coordinate Bench of the tribunal which have been referred to in the impugned order have been either set aside or appeals have been preferred before this court.

Thus, we are of the view that no question of law much less substantial question of law arises for consideration in this appeal.

Accordingly, the appeal fails and the same is dismissed.

Accordingly, stay application being GA/2/2021 stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

Pkd/GH