O-68

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

ITAT/147/2021
IA No.GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX-9, KOLKATA
VS.
SHRI PRABIR SANTRA

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

Appearance :
Mr. Vipul Kundalia, Adv…for the appellant.

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 7th August, 2019 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA No.1681-1683/Kol/2017 relating to assessment years 2007-08 to 2009-10 respectively.

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

i) Whether on the facts and circumstances of the case the learned Income Tax Appellate Tribunal erred in law in upholding Ld. 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 the flaw in basing the decision on extraneous materials and which gives rise to the vice of flaw in the decision making process ?

ii) Whether on the facts and circumstances of the case the learned tribunal was justified in law in deleting the addition made by the AO as unexpected money of the assessee and added the income of the assessment for the relevant years under section 69A of the Income Tax Act, 1961 ?

We have heard learned standing counsel appearing for the appellant.

Though notices have been served on the respondent none appears on behalf of the respondent.

After elaborate hearing of the learned counsel for the appellant, we are of the view that no substantial question of law arises for consideration in this appeal. We support such conclusion 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.47,17,77,433/-, 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.23,58,888/- for the commission earned on such sum. Hence, these grounds of the appellant are partly allowed."

The revenue filed appeal before the tribunal, which was dismissed by the impugned order. The tribunal noted the remand report from the assessing officer and aggrieved with the factual finding recorded by the CIT[A] we find that there is 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.