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ITAT/316/2018
IA No.GA/2/2018 (Old No.3422/2018)

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

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-4, KOLKATA

-Versus-

M/S. ANAND NIRMAN PVT. LTD.

Appearance:
Mr. S. N. Dutta, Adv.
...for the appellant.

Mr. J. P. Khaitan, Sr. Adv.
Mr. Asim Chowdhury, Adv.
Mr. Soham Sen, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 7th March, 2022.

The Court : This appeal by the revenue filed under Section 260A of the Income Tax, 1961 (the 'Act' in brevity) is directed against the order dated 12th July, 2017 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (in short the 'Tribunal') in ITA No.809/Kol/2013 for the assessment year 2009-10.

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

i) Whether on the facts and the circumstances of the case the Learned Income Tax Appellate Tribunal, *"B" Bench, Kolkata erred in law and in fact by deleting the addition of Rs.4,13,36,988/- out of which Rs.1,65,96,969/- was finally derived to be undisclosed investment based on seized documents in remand proceedings whereas the assessee failed to dispute the relation of the said seized documents with it in the remand proceedings?*

ii) Whether the Ld. Tribunal failed to apply its judicious mind and completely ignored the fact that the assessee has made cash payment to eight parties and the Assessing Officer observed that by the said act, the provision of section 269SS and 269T has been attracted. Thus, in the Remand Report the Assessing Officer also stated that these payments and receipts attract the provision of Section 269SS and 269T?

We have heard Mr. S. N. Dutta, learned standing counsel for the appellant/revenue and Mr.J. P. Khaitan, learned senior counsel assisted by Mr. Asim Chowdhury and Mr. Soham Sen, learned Advocates for the respondent/assessee.

We have carefully perused the findings recorded by the tribunal with regard to the issue raised in the first substantial question of law suggested by the revenue. The discussion is in paragraph 11 of the order passed by the tribunal. On going through the findings recorded by the tribunal, we find that the tribunal re-appreciated the findings recorded by the Commissioner of Income Tax (Appeals), Central-I, Kolkata [CIT(A)] while granting relief go the assessee vide order dated 18th January, 2013. We find that the matter is entirely factual and no substantial question of law arose for consideration. Accordingly, the same stands rejected.

So far as the issue which is mentioned in substantial question of law no.2, pertains to the initiation of proceedings under Section 269SS and 269T of the Act. In this regard, the CIT(A) as well as the tribunal followed the assessee's own case for the assessment year 2008-09. Against the said order revenue has filed ITAT/313/2018 which was dismissed. Further to be noted that in ITAT/313/2018 no such question of law was suggested by the revenue with regard to initiation of proceedings under Section 269SS and 269T.

Therefore, we find no reason to interfere with the findings recorded by the tribunal. Accordingly, the appeal filed by the revenue stands dismissed.

Consequently, the connected application for stay being IA No.GA/2/2018 (Old No.GA/3422/2018) stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

As/RS