

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

IA NO.GA/2/2017
(OLD NO. GA/3651/2017)
In
ITAT/369/2017

THE PRINCIPAL COMMISSIONER OF INCOME TAX – 3, KOLKATA
VS.
M/S. SHALINI PROPERTIES & DEVELOPERS PVT. LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date: January 3, 2022.

[Via video conference]

Appearance :
Mr. Tilak Mitra, Adv.
Mr. A. Bhowmik, Adv.
... for the appellant/revenue

Mr. Chayan Gupta, Adv.
Mr. Soumyajyoti Nandy, Adv.
... for the respondent

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 28th February, 2017 passed by the Income Tax Appellate Tribunal, “A” Bench, Kolkata (the Tribunal) in ITA No. 171/Kol/2013 for the assessment year 2009-10.

The Revenue has raised the following substantial questions of law for our consideration :-

1. Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in allowing of expenditure on account of processing fees amounting to Rs. 13,19,24,685/- on a loan taken by the third party without considering that the assessee has failed to produce copy of the debit note raised by ICICI bank during the assessment proceedings which materials evidence has not been examined by the Learned Commissioner of Income Tax (Appeals) as well as by the Learned Income Tax Appellate Tribunal?
2. Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in not considering the provisions of Section 37 of the Income Tax Act, 1961 where under third party payment is not for business provisions and not allowable for deduction?
3. Whether on the facts and circumstance of the case the Learned Income Tax Appellate Tribunal has erred in law by allowing the processing fee Rs.13,19,24,685/- paid to the ICICI Bank on a loan taken by the third party as deduction under Section 37(1) of the Income Tax Act, 1961?

We have heard Mr. Tilak Mitra, learned standing Counsel for the appellant and Mr. Chayan Gupta, learned Counsel appearing for the respondent/assessee.

We have heard elaborately the learned Counsel for the parties and carefully perused the materials placed on record. We find that the issue before us is entirely factual in this appeal. The following finding returned by the CIT(A) will clearly demonstrate what is the nature of transaction and as to how the CIT(A) held the expenditure to be of revenue in nature. After considering the remand report submitted by the assessing officer as well as noting the law on the subject as to when an expenditure could be construed as revenue expenditure, the CIT(A) has held as follows ;

“In the instant case, the payment has not been made for acquiring a brand name, but for facilitating for acquisition of the brand name, which in turn, made substantial improvement in earning capacity of the appellant’s business. The payment is in the form of a brokerage or commission or service charges **(notwithstanding its liability for TDS)**. Therefore, on the facts and in the circumstances of the case, in my view, the expenditure incurred by the appellant company for the payment made to M/s Shalini Properties & Developers Pv. Ltd. is a revenue expenditure.”

But this finding was tested for its correctness by the Tribunal and the Tribunal after taking note of the factual position in

no uncertain terms held that CIT(A) has examined each and every aspect of the case and held in favour of the assessee. But with regard to the issue whether the expenditure is allowable as business expenditure, under Section 37(1) of the Act, the CIT(A) has taken note of the various decisions on the point, namely the positive test and the negative test, which are to be applied, and thereafter proceeded to examine the facts, and held that the case of the assessee is entirely different from that of the case of *M/s Ruia Sons P Ltd.* In this regard, it is relevant to take note of the finding recorded by the CIT(A) in paragraph 5.1.16 of the order dated 27th November, 2012. This finding was reexamined by the Tribunal and the Tribunal has on facts concurred with the CIT(A).

Thus we find that there is no question, much less substantial questions of law, raising for consideration in this appeal.

Accordingly, the appeal stands dismissed, consequently the application also stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)