

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

ITAT/98/2023
IA NO: GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF
INCOME TAX CENTRAL KOLKATA 2
VS
M/S MANI SQUARE LTD.

ITAT/99/2023
IA NO: GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF
INCOME TAX CENTRAL KOLKATA 2
VS
M/S MANI SQUARE LTD

ITAT/100/2023
IA NO: GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF
INCOME TAX CENTRAL KOLKATA 2
VS
M/S MANI SQUARE LTD

ITAT/101/2023
IA NO: GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF
INCOME TAX CENTRAL KOLKATA 2
VS
M/S MANI SQUARE LTD

ITAT/102/2023
IA NO: GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF
INCOME TAX CENTRAL KOLKATA 2
VS
M/S MANI SQUARE LTD

BEFORE :

THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 12th July, 2023

Appearance :
Mr. Soumen Bhattacharjee, Adv.
... for the appellant

Mr. J.P Khaitan, Sr. Adv.
Mr. Saumya Kejriwal, Adv.
Ms. Ananya Rath, Adv.
Mr. G.S. Gupta, Adv.
... for the respondent nos.7-11

The Court : These appeals have been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) challenging the common order dated 6th August, 2020, passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (Tribunal) in IT(SS) A No. 58/Kol/2019, No. 75/Kol/2019, No. 59/Kol/2019, No. 60/Kol/2019, No. 76/Kol/2019, No. 61/Kol/2019 and No. 78/Kol/2019, for the assessment years 2013-14, 2014-15, 2015-16, 2016-17 and 2017-18 respectively.

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

- a) Whether the Learned Tribunal has committed substantial error in law by deleting the additions made under section 68 and 69C of the Income Tax Act, 1961 ?

- b) Whether the Learned Tribunal has committed substantial error in law by observing that the order passed under Section 143[3] of the Income Tax Act, 1961 as ab-initio void and bad in law in view of the notice and order issued in the name of amalgamated entity mentioning also the name of amalgamating entity ignoring the judgment of Hon'ble Apex Court in the case of Skylight Hospitality vs. CIT reported in SLP No.7409/2018 wherein it is held that mistake in notice and assessment order is curable by application under Section 292B of the Act ?
- c) Whether the Learned Tribunal has committed substantial error in law by holding that the statement recorded and the materials/documents seized during the course of search action under Section 132 of the Income Tax Act, 1961 of related party cannot be constituted to be 'incriminating' in nature for the assessee for drawing adverse inference ?
- d) Whether the Learned Tribunal has committed substantial error in law in holding that addition made by the Assessing Officer was beyond the scope of authority vested under Section 153A of the Income Tax Act, 1961 owing to absence of any incriminating material deducted as result of search conducted under Section 132 of the Income Tax Act, 1961 even though there was presence of incriminating material on record ?
- e) Whether the Learned Tribunal has committed substantial error in law in allowing the bogus unsecured loans received from

shell/paper companies and interest paid thereon without appreciating the fact that the assessee has failed to discharge its primary onus to prove and establish the identity and creditworthiness of the loan creditors and geniuses of the transactions ?

- f) Whether the Learned Tribunal has committed substantial error in law in declaring the order in the name of M/s. IQCIPL [the company which was amalgamated with M/s. Mani Square Ltd.] as ab initio void and bad in law even if the Hon'ble Apex Court held that in such mistake the same can be cured by invoking section 292B of the Income Tax Act, 1961 as reported in the case of M/s. Sky Light Hospitality LLP vs. ACIT [SC] in WP 9C 10870/2017 and CM No.44503/2017 ?

All the appeals have been filed with condonation of delay applications having 820 days delay. We have perused the affidavits filed in support of the condone delay petition, the affidavit-in-oppositions filed by the respondent/assessee and the affidavit-in-replies filed by the revenue.

As pointed out by the respondent/assessee, substantial part of the delay has not been properly explained except to refer to the Covid pandemic. Though we are not fully convinced with the explanation offered, keeping in mind that these appeals have been preferred under Section 260A of the Income Tax Act, 1961 in which the Court is

required to consider as to whether any substantial question of law arises for consideration, we exercise discretion and condone the delay in filing the appeals.

The learned Tribunal in paragraph 12 of the impugned order framed five issues for consideration which are as herender :

- a) Whether in absence of any incriminating material found in the course of search at the premises of the appellant, the additions/disallowances made in the assessments of the appellant and M/s. IQCIPL which were unabated [since assessment of AY 2013-14 was non-pending] on the date of search, could be held to be sustainable on facts and in law ?
- b) Whether the Ld. CIT[A] was justified in confirming the addition made on account of alleged on-monies of Rs.4,81,38,000/- received upon the sale of flat and car park[s] to M/s. Satyam Bubna [HUF] in the Shiromani Project ? If yes, whether based on this singular instance, the AO was justified in extrapolating and making addition by way of unaccounted sales in respect of all units and car parks sold in the Shiromani Project ?
- c) Whether the Ld. CIT[A] was justified in confirming the AO's order making addition on account of unsecured loans and interest paid thereon u/s 68 & 69C of the Act ?
- d) Whether the Ld. CIT[A] was justified in deleting the addition of Rs.15,07,993/- made by the AO by way of unaccounted transactions conducted by the appellant ?

- e) Whether the AO could be held to have validly assumed jurisdiction by issuing notices u/s 153A and 143[2] in the name of non-existent entity [M/s. IQCIPL] and consequent thereto frame separate assessment order dated 31.12.2018 and whether such action of the AO was tenable in the eyes of law or not ?

We shall consider the correctness of the order passed by the learned Tribunal on the above issues in seriatim.

The first issue is whether in the absence of any incriminating material found in course of search at the premises of the assessee, the additions/disallowance made in the assessment of the assessee and M/s. IQCIPL, which were unabated on the date of search, could be held to be sustainable on facts and in law.

The learned Tribunal has taken note of the factual position and the legal principle and proceeded to examine the issue and from paragraph 20 the learned Tribunal has examined the facts meticulously. It has been pointed out that on a careful examination of the materials on record it was noted that certain pages of the document marked RB/12 were unearthed from third party premises and nine months before the search took place in the assessee's premises. These were loose sheets of paper which neither contained the name of the assessee nor any mention of its project. Further, the document also did not disclose that it was prepared at the instance of the assessee. Furthermore, the Tribunal had undertaken an exercise to go through the entire loose papers and has recorded a factual

finding that there is no mention of the any cash payment by M/s. Satyam Bubna (HUF) to the assessee. Further, the Tribunal pointed out that even if the document is taken in its face value then also it suggests that the noting pertained to the year 2010 and no inference may be drawn against the assessee qua relevant assessment year, namely 2013-14. Further, the Tribunal found that the Assessing Officer has not been able to spell out as to how he arrived at such a conclusion. The Tribunal proceeded to examine the statement recorded from M/s. Satyam Bubna (HUF), from whose premises the documents were taken on 22nd September, 2014, who on oath stated that the documents were merely rough calculations prepared by him and did not form part of actual transaction. Further, he had stated that all the payments were made to the assessee through account payee cheques and no cash transactions were made by him. The statement recorded from the said person was held to strengthen the case of the assessee. Furthermore, the Tribunal noted that the assessee had raised a query under RTI by letter dated 2nd March, 2020 and information was secured from the Department. Upon going through the response to the RTI query, the Tribunal agreed with the submissions made on behalf of the assessee that when Satyam Bubna had stated that the documents were rough calculation, the Assessing Officer accepted his submission and neither drew any adverse inference nor made any addition on account of alleged cash payments in its hands as unexplained expenditure. The alternate contention

made on behalf of the assessee was also considered and the Tribunal in paragraph 24 of the impugned order has discussed the same and after placing reliance on the decision of the High Court of Delhi in Pr. CIT vs. Subhas Khattar in ITA No. 60 of 2017 dated 25.07.2017, recorded a finding on facts in favour of the assessee.

Thus, we find that the order passed by the Commissioner of Income Tax of Appeals [CIT(A)] was tested for its correctness by the Tribunal on facts and after recording independent factual finding the Tribunal has taken a decision in favour of the assessee by dismissing the appeal filed by the revenue. Thus, we find no substantial question of law arises for consideration on the said issue.

The next issue is whether the CIT(A) was justified in confirming the additions made on the account of the alleged on-monies received upon the sale of flats and car parks to M/s. Satyam Bubna in Shiromani Project and if the answer to the said question is yes, whether it is based on the single instance, the Assessing Officer was justified in extrapolating and making addition by way of unaccounted sales in respect of all units and car parks sold in Shiromani Project. In paragraph 30, the learned Tribunal has pointed out that the revenue has not raised any grievance/grounds on the finding of the CIT(A) in its appeal. Furthermore, at the time of hearing the Department's representative was not able to controvert the contention raised by the assessee nor the grounds of appeal preferred by the revenue had assailed the finding recorded by the CIT(A). On the said issue,

therefore the learned Tribunal held that they see no reason to interfere with the order passed by the CIT(A). Thus, this issue having not been contested by the revenue before the Tribunal, no question of law could arise from the said issue.

The next issue is with regard to the correctness of the order passed by the CIT(A) with regard to the additions on the unsecured loans and interest paid thereto under Sections 68 and 69C. The said issue was considered by the learned Tribunal by discussing the facts from paragraph 31 of the order. After elaborately discussing the facts and also noting that there has been violation of principles of natural justice and after taking into consideration of various decisions of the Hon'ble Supreme Court as well as the High Courts, in paragraph 74 the learned Tribunal has discussed the facts. The Tribunal has also held that the facts show that except for extracting the statement of the so called entry operators the Assessing Officer did not place on record any credible evidence/material which could show that the assessee had routed its unaccounted monies in the form of bogus loans. Furthermore, the Tribunal affirmed the order of the CIT(A) holding that there has been serious violation of principles of natural justice since the assessee was denied the opportunity to cross-examine the third parties whose statements were the basis of the addition. Thus, we find this issue is also fully factual and no substantial question of law can arise therefrom.

The next issue is whether the CIT(A) was right in deleting the addition made of Rs.15,07,993/- made by the Assessing Officer alleging the same to be unaccounted transactions conducted by the assessee. This issue has been considered and decided by the Tribunal in paragraphs 77 and 78 of the order. After noting the facts, the Tribunal held that payments were made to the staff members which were duly recorded in the regular books of accounts, the addition and therefore held that the CIT(A) rightly deleted the addition. This issue is also fully factual and no substantial question of law arises out of the same.

The last issue is whether the assumption of jurisdiction by the Assessing Officer by issuing notice under Sections 153A and 143(2) in the name of a non-existing entity and the consequent order of assessment were tenable in the eye of law.

The learned Tribunal after elaborately considering the factual position had taken note of the decision of the Hon'ble Supreme Court in *M/s. Saraswati Industrial Syndicate vs. CIT*, (1990) 186 ITR 278 (SC) and the decision of the Hon'ble Supreme Court in *CIT vs. Maruti Suzuki India Limited*, 416 ITR 613 (SC) had decided the issue in favour of the assessee and against the revenue.

Since the learned Tribunal had rightly applied the decision of the Hon'ble Supreme Court and granted relief to the assessee after taking note of the ratio decidendi of those decisions, we find there is no error in the order passed by the learned Tribunal.

Thus, for all the above reasons, we hold that the substantial questions of law as suggested by the revenue in questions (a), (c), (d) and (e), do not arise as they are completely factual.

So far as the substantial questions of law (b) and (f), as pointed out above, the learned Tribunal had dismissed the revenue's appeal following the decision of the Hon'ble Supreme Court in *Saraswati Industrial Syndicate Ltd.* and *Maruti Suzuki India Limited (supra)* and therefore, there is no error in the order passed by the learned Tribunal and accordingly, the substantial questions of law (b) and (f) are answered against the revenue.

The appeals and stay applications are thus dismissed accordingly.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)