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

ITAT/113/2023
IA NO. GA/1/2023
PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
VS.
M/s. NAINA DISTRIBUTORS PVT. LTD.

BEFORE:
THE HON'BLE THE CHIEF JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE AJAY KUMAR GUPTA
Date : 28TH JUNE 2023.

Mr. Prithu Dudhoria, Adv.
for appellant

The Court :- This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 4.1.2023 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata in ITAT/651/Kol/2020 for the assessment year 2012-13. The revenue has raised the following substantial questions of law for consideration :

i) WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in deleting the addition of Rs.4,67,50,000/-made by the Assessing Officer on account of share capital and premium in the courts of assessment in absence of identity of the creditors, genuineness and creditworthiness of the entire transaction ?

We have heard Mr. Prithu dudhoria, learned Counsel for the revenue.

After carefully considering the findings recorded by the Commissioner of Income Tax, (Appeals) 7 Kolkata (CITA) in his order dated 21.09.2020 and the findings recorded by the learned Tribunal we find that the entire matter is fully factual. The learned Tribunal has independently examined as to the genuinity of the transaction in the matter of raising share capital and the Tribunal noted that even during the assessment proceedings, the assessee has furnished all details in respect of the share capital and share premium raised by the assessee besides the details of the investors by their submission dated 9.6.2014 in reply to the notice issued by the Assessing Officer under Section 142 of the Act dated 5.5.2014. The Tribunal also noted that the assssee had produced all documents, disclosed the names and addresses and PAN Numbers of the investors, copies of the share allotment advice, copies of the share application form, bank statement, statement giving details of share application, money receipt during the year, copy of Form No. 2 evidencing return of allotment and copy of Form No. 5 for increase in various capital. Further the assessing officer has issued notice to the investors under Section 133(6) on 11.06.2014 for carrying out independent verification of the transaction and those investors duly responded to those notice and filed the requisite details such as the number of shares subscribed, ledger account, bank statement, explanation for source of funds, income tax returns and audited financial statements and also assessment order framed under Section 143(3) of the Act in all the cases. The Tribunal further noted that in spite of such being the factual position, the only reason for making the addition in the hands of the assessee the director of the assessee company did not respond to the summons issued by the assessing officer under Section 131 of the Act. The correctness of this was also considered by the learned Tribunal and it was held that non appearance of the director cannot be made a ground for addition in the hands of the assessee under Section 68 of the Act when other evidence relating to the raising of share capital qua the share subscriber were available on record as furnished by the assessee and also cross verified by the assessing officer pursuant to the enquiry conducted in response to the notices issued under Section 133(6) of the Act. The learned Tribunal also referred to the decision of this Court in the case of *Crystal Networks Pvt. Ltd. Vs. CIT.* reported in 353 ITR 171 (CAL).

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

Accordingly, the appeal fails and is dismissed.

Consequently, the application also stands dismissed.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(AJAY KUMAR GUPTA, J.)

Pkd/GH.