

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

ITAT/187/2023
IA NO: GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX 1, KOLKATA
VS
M/S ABHIJEET ENTERPRISE LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 17TH November, 2023

Appearance :
Mr. Tilak Mitra, Adv.
...for appellant
Mr. Subhas Agarwal, Adv.
...for respondent

GA/1/2023

The Court : - We have heard Mr. Tilak Mitra, learned standing Counsel for the revenue/appellant and Mr. Subhas Agarwal, learned Advocate for the respondent/assessee. There is a delay of 1042 days in filing the appeal. Though the reasons given in the petition are not fully convincing, since the appeal has been filed under Section 260A of the Income Tax Act, (the Act) and they are required to examine as to whether any substantial questions of law arise for consideration, we exercise our discretion in the matter and condone the delay in filing the appeal.

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This appeal by the revenue is directed against the order dated 27th March, 2019 passed by the Income Tax Appellate Tribunal "C" Bench Kolkata (the Tribunal) in ITA No.308/Kol/2017 for the assessment year 2013-14.

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

- i) Whether the Learned Tribunal has erred in law and fact in setting aside the order of the CIT (A) with limited direction to invoke section 68 of the

Act only if he is satisfied about actual receipt of sum by the assessee, in acquiring investments and rights?

- ii) Whether the Learned Tribunal has erred in law and fact in treating the transaction through shares as beyond the ambit of section 68 of the Act, ignoring that 'shares' tantamount 'to money' here as a medium of exchange which is a mode of circumventing the said provisions?
- iii) Whether the Learned Tribunal has erred in law and fact in deleting the addition under section 68 of the Act, without appreciating the fact that section 68 not only includes cash credit but also include a credit representing the value of shares on credit?

After we have elaborately heard the learned Advocate for the appellant we find learned Tribunal was right in allowing the assessee's appeal to the extent indicated by taking note of the various decisions of the High Court on the very same subject. In this regard, we refer to the decision of the High Court At Madras in V.R. Global Energy (P) Ltd. vs. ITO, Corporate Ward 3(4), Chennai 407 ITR 145 (Madras). It was held that when the assessee allotted share to a company in settlement of their existing liability of assessee to the said company, since no cash was involved in the transaction of said allotment of shares. conversion of this liability in which share capital and share premium could not be treated as unexplained cash credits under Section 68 of the Act. The Revenue filed an appeal against the said judgement and the same was dismissed by the Hon'ble Supreme Court in ITO vs. V.R. Global Energy (P) Ltd. [2020] 113 taxmann.com 31(SC). The decision of the Hon'ble Division Bench of the High Court of Delhi in case of CIT vs. Ritu Anurag Agarwal, 2009(7)TMI 1247, Delhi High Court, the same also stands in aid to the case of the respondent/assessee.

The decision of the Hon'ble Division Bench of this Court in Jatia Investment Co. Vs. CIT (1994) 206 ITR 78 (Cal) will also support the case of the respondent/assessee. In the said decision, the Court found that cash did not pass at any stage though entries were made in cash book showing payment and receipts; but since the entries made a

complete round, no passing of cash was necessary for the purpose of making entries. Further, it was held that if there was no real cash entry on credit side of the cash book by merely an emotional or fictitious cash entry, as admitted by the Income Tax Officer, there is no real credit to cash, to its cash book the question of inclusion of the amount of the entry as unexplained cash credit cannot arise. In the light of the above decision, the view taken by the learned Tribunal was perfectly in order and sustainable.

Thus, we find there is no ground to interfere with the order passed by the learned Tribunal. Accordingly, the appeal is dismissed and the substantial questions of law are answered in favour of the revenue.

The portion of the order and direction of the learned Tribunal remanding the matter for a limited purpose is affirmed.

Consequently, the applications stand closed.

(T.S. SIVAGNANAM, C.J.)

(HIRANMAY BHATTACHARYYA, J.)