OD – 18

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITAT/188/2023
IA NO.GA/1/2023
PRINCIPAL COMMISSIONER OF
INCOME TAX – 2, KOLKATA

-Versus-

M/S. FORCEFUL ESTATES PVT. LTD.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 18th November, 2023

Appearance :
Mr. Smita Das Dey, Adv.
Mr. Prithu Dudheria, Adv.
..for the appellant.

The Court : This appeal by the revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 3rd April, 2023 passed by the Income Tax Appellate Tribunal, Bench – C, Kolkata in ITA No.2558/Kol/2018 relating to 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 was justified in deleting the addition of Rs.7,60,00,000/- under Section 68 of the IT Act, 1961 relying upon the paper submission made by the assessee without appreciating the fact that the

credits are fresh for which the assessee failed to establish the identity, creditworthiness of share holders and the genuineness of the transaction?

ii) WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was justified in not appreciating the principal which has been laid down by the Hon'ble Supreme Court in the case of Pr. CIT(Central)-1, Kolkata Vs. NRA Iron & Steel Pvt. Ltd. (412 ITR 161) wherein it has been held that the Assessing Officer was duty bound to investigate the creditworthiness of the creditors/subscribers, verify the identity of the subscribers and ascertain whether the transaction is genuine or these are bogus entries of name holders?

iii) WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was justified in not considering the fact that the registration of the companies under the ROC and utilisation of banking channels do not grant legitimacy to the transactions made by them and in such case appearance of parties to explain the transaction become extremely crucial to establish the identity of creditworthiness of the shareholders and the genuineness of transaction?"

We have heard Ms. Smita Das De, learned standing counsel along with Mr. Prithu Dudheria, learned advocate appearing for the appellant.

The short question involved in this appeal is that the Tribunal was justified in affirming the order passed by the Commissioner of Income Tax (Appeals) – VII, Kolkata dated 21st August, 2018 by which the CIT(A) had deleted the addition under Section 68 of the Act as done by the assessing officer in the order of assessment dated 28th March, 2015 passed under Section 143(3) of the Act. The issue which was considered by the CIT(A) with regard to the identity and creditworthiness of the shareholders and the genuineness of the share application money. The CIT(A) has made an elaborate factual exercise in examining the genuineness of the transactions in respect of the sixth shareholder and was satisfied that the identify and creditworthiness have been clearly established and all of them have been scrutinised under Section 143(3) of the Act. Some of the share capital and the share premium are clearly established. The reason why the assessing officer made the addition was solely on the ground that the assessee and the shareholders did not respond to the summons issued under Section 131 of the Act. The CIT(A) after being satisfied on facts has held that the corpus has been explained in the eye of law and, therefore, it cannot be treated to be unexplained investment under Section 68 of the Act. The Tribunal on its part re-appreciated the factual position and affirmed the order passed by the CIT(A). Reliance was also placed on the decision of the High Court of Bombay in the case of PCIT, Panji Vs. Paradise Inland Shipping Pvt. Ltd. reported in (2017) 84 taxmann.com 58 (Bom). Further, the learned Tribunal also took note of the decision of this Court in Crystal Networks (P) Ltd. Vs. CIT and dismissed the appeal filed by the revenue. Thus, we do not find that there is no question of law much less substantial question of law arises for consideration.

Hence, the appeal fails and the same is dismissed. The connected application [GA/1/2023] also stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das/