ORDER O-50

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

ITA/20/2013

COMMISSIONER OF INCOME TAX, CENTRAL-I, KOLKATA-I
VERSUS
M/s. GLAMOUR VANIJYA PVT. LTD.

BEFORE :

THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
AND
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ

Date : 13th February 2024.

Appearance:

Mr. Om Narayan Rai, Advocate
Mr. Soumen Bhattacharjee, Advocate
...for the appellant.

1. Heard Sri Om Narayan Rai, learned senior standing counsel for the appellant. None appears for the respondent assessee.

2. This appeal relating to assessment years 2006-07 and 2007-08 filed by the revenue was admitted by this Court by order dated 01.02.2013, on the following substantial question of law:-

> *"Whether the judgment in the case of Shrishali Nageshi Pare –Vs.- State of Maharashtra, reported in AIR 1985 SC 866, can have any application to a case where independent evidence was collected by the investigating agency?"*

3. We find that the assessing officer made addition on protective basis and the basis of making addition was the investigation carried by the Director of Investigation (Income Tax) in which an allegation of making accommodation entry was made. The basis of making allegation was the statement of the director of the assessee company dated 09.04.2007, which was retracted. The ground taken before the assessing officer for retraction of the statement was rejected by the assessing officer. The CIT (Appeal) examined the facts and evidences on record and deleted the additions made by the assessing officer. The CIT(A) followed the orders passed in the case of Ankita Finvest Private Limited and some others. The appeals filed by the revenue in some other similar matters like the present one, were dismissed by the Income Tax Appellate Tribunal and the order of the CIT(A) was affirmed. Invocation of Section 69 of the Income Tax, 1961 was found to be not justified on facts of the present case on the ground that all the investments were recorded in the books of account of the assessee and therefore, there was no warrant for the assessing officer to make addition in respect of such investments, that too, on protective basis. The Tribunal has also recorded a finding that no evidence has been brought on record by the revenue to prove that the transaction declared in the books of account of the assessee is not correct. The retracted statement was made the sole basis by the assessing officer to make addition on protective basis invoking Section 69 of the Income Tax Act, 1961.

4. We find that the findings recorded by the CIT(A) and the ITAT in the impugned order are findings of fact based on consideration of relevant evidences on record. Both the fact-finding authorities have found that except the retracted statement, there was no material to make addition of the amount invoking Section 69 of the Income Tax Act, 1961 and that too, on protective basis. The findings recorded by the fact-finding authorities i.e. the CIT(A) and the ITAT are findings of fact based on consideration of the relevant evidences on record. ITA/86/2012, ITA/89/2012, ITA/93/2012, ITA/96/2012 and ITA/136/2012 filed by the revenue involving similar issues have also been dismissed today by this Court. Under the circumstances, the impugned order of the ITAT dated 08.03.20212 in ITA Nos.308-309/Kol/2011 for the assessment years 2006-07 and 2007-08 requires no interference. The appeal lacks merit and is dismissed. The substantial question of law as framed is answered accordingly.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

S. Kumar