

OD-12

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

ORIGINAL SIDE

ITAT/80/2024
IA No: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX,
CENTRAL-1, KOLKATA
VS.
M/S. NARSINGH ISPAT LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 11th March, 2024

Appearance :
Ms. Smita Das De, Adv.
Mr. Prithu Dudhoria, Adv.
...for appellant

Mr. Kartik Kurmy, Adv. (VC)
Mr. Indranil Banerjee, Adv.
Mr. Subrata Mukherjee, Adv.
Mr. Debayan Dutta, Adv.
...for respondent.

The Court : We have heard Ms. Smita Das De, learned standing Counsel appearing for the appellant revenue and Mr. Kartik Kurmy, learned Counsel appearing for the respondent assessee.

There is a delay of 59 days in filing the present appeal. We are satisfied with the reasons given by the appellant department for not preferring the appeal within the period of limitation. Hence, the condone delay petition is allowed and delay in filing the appeal is condoned.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 26th July, 2023 passed by the Income Tax Appellate Tribunal, 'B' Bench, Kolkata, in I.T.A No.255/Kol/2023 for the assessment year 2012-13.

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

- a) *Whether on the facts and in the circumstances of the case the Tribunal was justified in law to delete the additions under Section 68 of the said Act to the tune of Rs. 19,14,50,500/- despite the fact that the genuineness of the share capital could not be established, as one of the major applicant M/s. Honesty Dealers Private Ltd. had subscribed to the shares of the assessee, whose source being receipt of the share capital from other companies was already held as bogus receipt and added in the hands of M/s. Honesty Dealers Private Ltd. ?*
- b) *Whether on the facts and in the circumstances of the case the Tribunal was justified in law to delete the addition under Section 68 of the said Act ignoring the fact that the creditworthiness of both the applicant companies namely, M/s. Honesty Dealers Private Ltd. and M/s. Seaview Agencies Private Ltd. could not be proven as both the companies, without having any business activities, have received share premium from other companies and in turn subscribed to shares of the assessee company as a premium who is the ultimate beneficiary ?*

After elaborately hearing the learned Advocates for the parties and carefully perusing the materials placed on record, we find that while contesting the correctness of the assessment order passed by the assessing officer under Section 143(3) of the Act dated 4.3.2015 by which the assessing officer added back the entire share application/allotment money under Section 68 of the Act as undisclosed cash credit, the Commissioner of Income Tax (Appeals) Kolkata - 20 [CIT(A)] has done an elaborately factual exercise. There were two companies which were involved one being M/s. Honesty Dealers Private Limited and the other M/s. Seaview Agencies Private Limited. The CIT(A) has examined the factual position in respect of both the companies but in so far as M/s. Honesty Dealers Private Limited the CIT(A) found in the assessment year 2009-10, which is a scrutiny assessment under Section 147 of the Act dated 12.3.2015, the entire receipt of share capital has been added in the hands of M/s. Honesty Dealers Private Limited. Further, on perusal of the balance-sheet of the said company, the CIT(A) found that the major chunk of share capital received in the assessment year 2009-10 has been invested in the shares of the assessee company and has been out of the share capital raised in the assessment year 2009-10 and in the very same assessment year the entire share capital raised by M/s. Honesty Dealers Private Limited has been added back in the hands of the party. Furthermore, on examining the

facts the CIT(A) found that the creditworthiness of M/s. Honesty Dealers Private Limited vis-a-vis the investment in the shares of the assessee company has been established. There is also a finding that there is a clear link between the raising of the share capital and in the assessment year 2009-10 by M/s. Honesty Dealers Private Limited and investing the major share capital into the shares of the assessee company for the assessment year 2012-13. The CIT(A) has also done a similar exercise in M/s. Seaview Agencies Private Limited. It noted that in the assessment year 2011-12 information was received from the investigation wing of the department regarding unaccounted income received by M/s. Seaview Agencies Private Limited and accordingly, addition was made treating the same as unexplained cash credit under Section 68 of the Act. Similarly, for the assessment year 2012-13 there was another information from the investigation wing regarding the unaccounted income and this amount was also added to the total income. The CIT(A) perused the assessment orders for those two years which showed that the assessing officer has not made any adverse comment on the entries of the balance-sheet. Furthermore, on facts the CIT(A) found that the investigation wing has not found any adverse comments against share capital raised by M/s. Seaview Agencies Private Limited in the assessment year 2009-10. Thus, it was concluded that there is nothing on record to suggest that the share capital raised by

M/s. Seaview Agencies Private Limited in the assessment year 2009-10 was not genuine. Further, the tribunal on facts concluded that the identity and creditworthiness of the investors are not in doubt and the transaction was found to be genuine.

The revenue challenged this order before the tribunal. The tribunal have once again re-appreciated the factual position and more importantly found that the share application money received by the assessee from M/s. Honesty Dealers Private Limited has already been added back in the hands of the share application and as the source has already been added, it upheld the action of the CIT(A).

A similar exercise was also done by the tribunal in so far as M/s. Seaview Agencies Private Limited is concerned. Apart from the fact the tribunal noted that the assessee company is having a huge turnover for the financial year 2012-13 amounting to Rs.145.38 crores and net profit from continuing operation was Rs.145 crores (approximately) and the total income declared was Rs.1.74 crores. Therefore, the tribunal on facts found that the identity and creditworthiness of the share applicant was established. The tribunal apart from relying upon a decision of the co-ordinate Bench of the tribunal in the case of ITO Vs. Dharamvir Merchandise (P) Ltd. reported at [2023] 149 taxmann.com 221 (Kolkata - Trib.) took

note of the decision of this Court in the case of Principal CIT Vs. Sreeleathers reported in [2022] 448 ITR 332 (Cal). After taking note of the legal position as set out in the said decisions, the tribunal affirmed the order passed by the CIT(A) by recording a factual finding that the three necessary ingredients, namely, identity, creditworthiness of the share applicants and genuineness of the transaction as provided under Section 68 of the Act have been established and there was no ground to interfere with the order passed by the CIT(A) dated 25.1.2023.

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

Hence, the appeal fails and is dismissed.

The stay application GA/2/2024 also stands dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)