

OD - 15

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

ORIGINAL SIDE

ITAT/197/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME
TAX 2 KOLKATA
VS
M/S FAST FLOW SECURITIES PVT LTD

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 20th December, 2024

Appearance :
Mr. Smita Das De, Adv.
Mr. Soumen Bhattacharjee, Adv.
...for the appellant.

Mr. Hemant Tiwari, Adv.
..for the respondent.

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 13th July, 2023 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA No.32/Kol/2021 for the assessment year 2012-13.

The revenue has raised the following substantial questions of law :

"(i) Whether the Learned ITAT has was justified in law to delete the addition of Rs.8,31,00,000/- on account of unexplained receipts of share application money, ignoring the fact that the assessee failed to prove the identity of

the alleged shareholders, their creditworthiness and also the genuineness of the whole transactions.

(ii) Whether the Tribunal was justified in law to arrive at a conclusive finding that mere compliance under Section 133(6) of the Act is sufficient to satisfy and/or fulfill the in guidance prescribed under Section 68 of the said Act ignoring the tenor of law that non-compliance to the notices issued under Section 131 vitiates the mandate of proving creditworthiness and genuineness of a transaction during assessment proceeding.

(iii) Whether on the facts and in the circumstances of the case the Tribunal was justified in law is not appreciating the settled preparation of law as laid down in Pr. CIT (Central - 1) Kolkata Vs- NRA Iron & Steel Pvt. Ltd. reported in 412 ITR 161 that the assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the assessing officer failing which would justify addition of the amount in question to the income of the assessee."

We have heard Ms. Smita Das De, learned senior standing counsel appearing for the appellant/revenue and Mr. Hemant Tiwari, learned advocate appearing for the respondent/assessee.

The short question which falls for consideration is whether the learned Tribunal was right in affirming the order passed by the Commissioner of Income Tax (Appeals)- 7, Kolkata [CIT(A)] dated 2.9.2020 by which addition made under Section 68 of the Act was set aside. We find that the CIT(A) while examining the correctness of the transaction had taken into consideration the

parameters which have been laid down in various decisions of the Hon'ble Supreme Court as to how a matter should be examined when the assessing officer proposes to invoke this power under Section 68 of the Act. The broad principles which were laid by the Hon'ble Supreme Court in so far as the credits of the share capital/premium are that the assessee under a legal obligation to prove the genuineness of the transactions, the identity of the creditors and creditworthiness of the investors who should have financial capacity to make the investment in question to the satisfaction of the assessing officer, so as to discharge the primary onus. The second aspect is with regard to the duty of the assessing officer, wherein it was held that the assessing officer is duty bound to investigate the creditworthiness of the creditors/subscribers, verify the identity of the subscribers and ascertain whether the transaction is genuine or there are bogus increase of name lenders. If the enquiry and investigation reveal that the identity of the creditors to be dubious or doubtful or lack of creditworthiness then the genuineness of the transaction would not be established.

As noticed above, the CIT(A) had in mind the broad parameters laid down by the Hon'ble Supreme Court and examined the factual position. There were seven subscribers whose creditworthiness was considered by the CIT(A) and in paragraph 4.3 of the order passed by the CIT(A) dated 2nd September 2020, the net worth of the companies have been set out. In paragraph

4.4 the CIT(A) noted that it is evident from the information furnished by the assessee filed out of the seven subscriber companies were subjected to assessment under Section 143(3) of the Act for the assessment year under consideration and in respect of two other assesses their returns were accepted by the assessing officer without any demur. Not stopping with that, the learned Tribunal took note of various decisions of the High Courts and has recorded that the assessing officer has not pointed out that the identity of the share applicants is not proved and/or the subscription made by them to the share capital of the assessee was not genuine and/or the source of investment was not fully explained to the satisfaction of the assessing officer. The correctness of the factual finding rendered by the CIT(A) was re-examined by the Tribunal and the learned Tribunal also found that the assessing officer has not pointed out as to what enquiry he has made and as to how in his opinion the transactions were held to be not genuine. The only aspect which borne in the mind of the assessing officer was that the directors of the erstwhile subscribers company, though were issued summons, did not personally appear. However, it is not in dispute that the documents were all placed before the assessing officer and no independent enquiry was conducted by the assessing officer to re-examine those documents which were produced. Thus, we find that the matter to be entirely factual

and no question of law much less substantial question of law arises for consideration.

In the result, the appeal is dismissed and the connected application stands closed.

(T.S. SIVAGNANAM)
(CHIEF JUSTICE)

(HIRANMAY BHATTACHARYYA, J.)