OD-8

ITA/92/2012

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (Income Tax)
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX,
KOLKATA-I, KOLKATA

-Versus-

SRI KAILASH PRASAD JAIN

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date :29th April, 2024

Appearance:
Mr. Vipul Kundalia, Adv.
Mr. Amit Sharma, Adv.
...for the appellant

Mr. N. K. Choudhury, Adv.
Mr. Nilotpal Choudhury, Adv.
Mr. Deepak Sharma, Adv.
...for the respondent.

1. Heard Sri Vipul Kundalia, learned senior standing counsel for the appellant/department and Sri Choudhury, learned counsel for the respondent/assessee.
2. This appeal was admitted by this Court by order dated 30.07.2012 on the following substantial questions of law:
   i) Whether the Income Tax Appellate Tribunal is justified in deleting the addition made by the Assessing Officer under Section 68 of the Income Tax Act, 1961 on the basis of the entry of the seized diary

marked as KP 19 and so the decision of the Tribunal is not based on records and documents as such perverse ?

ii) *Whether the Income Tax Appellate Tribunal erred in not considering the direct and corroborative evidence available on record and findings and non-consideration of those records made the order of the Tribunal as perverse ?*

iii) *Whether the decision is patently wrong being contrary to decision reported in 300 ITR 205 (SC) in as much as the findings are not based on any evidence and further finding is contrary to evidence ?*

iv) *Whether the order of the Tribunal is maintainable at all as the Tribunal did neither recognize nor relied upon the statement recorded under Section 132(4) of the Income Tax Act during search as admissible evidence and as such the order of the Tribunal is perverse ?*

3. We have carefully considered the submissions of learned counsel for the parties and perused the paper book.

4. We find that the Tribunal has dealt in detail with the issues in question on merit in paragraphs 21 to 33 of the impugned order and has recorded finding of fact based on consideration of all relevant materials/evidences available on record, concluding as under:

> *"33. We are of the view that this entry made by assessee and especially when they go against the averment of assessee, are an extremely important piece of evidence but it cannot be said that these are conclusive. The assessee* ***before us has demonstrated that KP-19 is only index for the loan/investments entries recorded in PT-6. All entries of PT-6 are incorporated in summary manner in KP-19 and all entries were cross verified by the Assessing Officer***

> ***from PT-6 to KP-19 and found recorded all in PT-6 and then taken to KP-19, which is only an index****. In such situation and above discussions on merits,* ***we are of the view that this is a stray entry not corroborated by any evidence because it is not correspondingly recorded in any other seized material. Hence, we reserve the findings of CIT(A) and the Assessing Officer and this issue on merits is allowed in favour of the assessee."***

5. We find that the findings recorded by the Tribunal are findings of fact based on consideration of all relevant materials/evidences on record. Therefore, the impugned order of the Tribunal cannot be interfered with. Accordingly, the above noted questions of law are answered in favour of the assessee and against the revenue.
6. The appeal (ITA/92/2012) is dismissed.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

As.