ORDER O – 19

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

ITA/258/2009
COMMISSIONER OF INCOME TAX, CENTRAL-I, KOLKATA
VERSUS
BINANI INDUSTRIES LTD.

BEFORE :

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

Date : 1st April 2024.

Appearance:

Ms. Smita Das De, Advocate
Mr. Prithu Dudheria, Advocate
... for the appellant.

Mr. Mihir Naniwadekar, Advocate
Mr. Pranit Bag, Advocate
Mr. A.K. Dey, Advocate
... for the respondent.

1. Heard Smt. Smita Das De, learned senior standing counsel for the appellant and Sri Mihir Naniwadekar, learned counsel for the respondent assessee.

2. This appeal has been admitted on the following substantial question of law:-

"Whether on the facts and circumstances of the case, the Tribunal was justified in law to confirm the order of CIT (A) by deleting the addition of Rs.4 crore holding inter alia that the share capital received from four companies was genuine as the same has been disclosed in the balance sheet and return of income?"

3. Perusal of the assessment order, the order of the CIT(A) and the impugned order dated 17.04.2009 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata shows that a sum of Rs.4 crore was invested by some companies in the share capital of the respondent assessee which was disbelieved by the assessing officer and treating it as unexplained cash credit, the addition of the said amount was made in the hands of the assessee under Section 68 of the Income Tax Act, 1961 [hereinafter referred to as 'the Act, 1961'].

4. Section 68 of the Act, 1961, as it existed during the assessment year in question i.e. AY 1999-2000 is reproduced below:-

> ***68.*** *Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year."*

5. The case set up by the assessing officer so as to invoke Section 68 of the Act, 1961 may be found in paragraph 5 of the assessment order in which he set up a case that the amount originated from the assessee company and after routing through various companies, it was ultimately given as unsecured loan by one M/s. Lexus Holdings & Finance Private Limited to the assessee, which was subsequently converted into share capital. Thus, the case set up by the assessing officer was that the amount originated from the assessee company and it ultimately came in the

hands of the assessee company as share capital. We fail to understand that even on this imaginary ground taken by the assessing officer, how Section 68 of the Act, 1961 would be attracted. That apart, we find that the finding recorded by the ITAT as aforequoted is a finding of fact based on consideration of relevant evidences on record. Therefore, no interference can be made. The appeal lacks merit and, therefore, deserves to be dismissed and is hereby dismissed. The substantial question of law as framed above is answered accordingly.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)

S. Kumar