

OD-5

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/280/2023
IA NO: GA/1/2023, GA/2/2023

TRIBHUVAN DEALTRADE PVT. LTD.
VS
THE INCOME TAX OFFICER WARD 9 (I) KOLKATA

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 19th January, 2024.

Appearance :
Mr. Kapil Goel, Adv.
Mr. Sandeep Goel, Adv.
Mr. Kushagra Shah, Adv.
...for appellant.
Ms. Smita Das De, Adv.
Mr. Prithu Dudheria, Adv.
...for respondent.

The Court :- Heard learned Counsel on either side.

It appears there is a delay of 31 days in filing the appeal. We are satisfied with the reasons assigned in the affidavit filed in support of the condonation of delay petition and found sufficient cause has been shown for not preferring the appeal within the period of limitation.

Accordingly, the petition for condonation of delay stands allowed.

This appeal by the assessee under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 16.12.2023 passed by the Income Tax Appellate Tribunal A Bench, Kolkata (the Tribunal) in ITA No.

783/Kol/2019 for the assessment year 2012-13. The assessee has raised the following substantial questions of law for consideration:-

- (a) Whether the Hon'ble Tribunal erred in allowing the addition of Rs.25,04,00,000/- made by the Assessing Officer under section 68 of the Income Tax Act, 1961 when the Assessee Company had fulfilled the tenets of proving the identity, genuineness and creditworthiness of the transactions and when the only factor that played against the Assessee Company while determining the genuineness and creditworthiness of the transactions were the nature of business of the investor share applicants which themselves being investment companies were surviving on interest income and were raising their capital to make investment in shares and securities ?
- (b) Whether the Hon'ble Tribunal has failed to take into consideration that such investing share applicants were also assessee to the Revenue and if their individual accounts were not doubted then such investments made by them in another company could not be doubted as dubious or bogus or rather not creditworthy ?
- (c) Whether the Hon'ble Tribunal has proceeded to uphold the order passed by the Assessing Officer only on the premise that the Directors of the Assessee Company did not present themselves to identify the genuineness of issuing share capital with huge share premium ?

We have heard learned Counsel on either side.

The assessing officer while completing the assessment under Section 143(3) of the Act by order dated 13.3.2015 held that a sum of Rs.25,04,00,000/- shown as share capital raised in the books of the assessee to be considered as

undisclosed income and added back under Section 68 of the Act to be declared as total income for the assessment year under consideration.

Aggrieved by such order the assessee preferred appeal before the Commissioner of Income Tax, Appeals (11), Kolkata (CITA). The CITA by order dated 30.1.2019 by an elaborate and well reasoned order dismissed the appeal and confirmed the addition. Aggrieved by the same the assessee preferred the appeal before the Tribunal. We have carefully perused the order passed by the learned Tribunal and found that the learned Tribunal firstly examined the correctness of the reasons recorded by the CITA and aggrieved by the same not stopping with that the learned Tribunal has undertaken to examine the factual position namely the financials of the share applicants companies and found that the assessee company had no foundation to attract a huge premium of Rs.9,990/- of equity shares of face value of Rs.10/- each and held that there is no genuineness in the transaction and the transaction of receiving share capital and share premium are in the nature of accommodation / bogus entries.

On being satisfied with the documents placed before the Tribunal, the Tribunal agreed with the finding recorded by the CITA. Thereafter, the Tribunal also pointed out that so far as the creditworthiness of the share applicants is concerned, the Tribunal noted that there is a common pattern that any of such companies of which the income is very meager and in comparison of such income in the present as well as in the past period do not carry a weight and is beyond human probability to venture for a huge investment in the assessee company which itself has poor financials. Thus, the Tribunal on re-appreciating the factual position affirmed the order passed by the CITA.

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

Accordingly, the appeal fails and the same stands dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)