IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2024

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR
AND
THE HON'BLE MR.JUSTICE C.SARAVANAN

Tax Case Appeal No.325 of 2023

Principal Commissioner of Income Tax
Corporate Ward-1(1), Nungambakkam
Chennai 600 034. ... Appellant

Vs.

M/s.Luminous and Smart Investment
Consultants Pvt Ltd., No.59, New No.111
6th Floor, Kalakshetra Salai, Lattice Bridge Road
Adyar, Chennai 600 041.
PAN : AABCL 6950C ... Respondent

Tax Case Appeal filed under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Chennai, dated 01.07.2022 made in ITA No.484/2017.

For Appellant : Mrs.V.Pushpa
Senior Standing Counsel

For Respondent : Mr.G.Baskar

JUDGMENT

(Delivered by R.SURESH KUMAR, J.)

This Tax Case Appeal has been filed by the Revenue calling in question the correctness of the order passed by the Income Tax Appellate Tribunal, Chennai raising the following substantial question of law:

1. Whether on the facts and circumstances of the case and in law the ITAT is correct in deleting the addition made u/s. 68 of the Act on the ground that when the assessee has provided the name and identity of the creditors together with the particulars of bank account, the onus is discharged and the transactions are genuine?

2. Whether on the facts and circumstances of the case and in law the ITAT is correct in deleting the addition made us. 68 of the Act without appreciating the fact that the transaction was pre-arranged, as well as sham and was carried out through paper/shell companies?

3. Whether on the facts and circumstances of the case and in law the ITAT is correct in failing to appreciate that the onus of burden stands shifted on the assessee when the enquiries conducted at Kolkata and confession of the entry operator, Shri Sandeep Kumar Sethia has disapproved the claims of the assessee and proves that the contribution from the Kolkata entry operators are bogus?

4. Whether on the facts and circumstances of the case and in law the ITAT is correct in relying on the decision of the Hon'ble Madras High Court in the case of M/s. BR Petrochem 84 CCH

128 and still grant relief, when in reality, that decision is in favour of Revenue?

5. Whether on the facts and circumstances of the case and in law the ITAT is correct in its averment that the assessing officer had not negated the evidences filed by the assessee, when it is a proven fact that enquiriesconducted by the Investigation Unit at Kolkata and the confession of the entry operator had negated the claims of the assessee?

6. Whether on the facts and circumstances of the case and in law the ITAT in correct in failing to take cognizance of the enquiries and its aftermath conducted by the Investigation Unit at Kolkata and merely relying on the explanation of the Director of the company, which cannot be termed as a gospel truth?

7. Whether on the facts and of the case and in law the ITAT is correct in granting relief to the assessee without deliberating on the inapplicability of the decision of the Delhi High Court in the case of Riddhi Promoters P Ltd Vs. CIT 377 ITR 641 (Del) which was relied by this Ld. CIT(A) in his order and when the facts of the case and question of law are exactly similar to that of the case of the assessee?

8. Whether on the facts and circumstances of the case and in law the ITAT is correct in failing to appreciate the principle laid down by the Hon'ble Supreme Court in the case of PCIT(Central) Vs. NRA Iron and Steel Ltd 412 ITR 161 (2019) (SC) and that of the Hon'ble Madras High Court in the case of CIT Vs. Manish D Jain (HUF) (2020) 122 taxmann.com 180 (Madras) which had laid down the principles and methodology on the aspect of discharge of onus of proof in case of bogus *entries subsequent to the investigation conducted by the Department?*

9. Whether on the facts and circumstances of the case and in law the ITAT is correct in disregarding the concurrent findings of two lower authoritie without adducing any reason?

2. It is brought to our notice by the learned Standing Counsel for the appellant Revenue that in the instant case, the tax effect is said to be less than the monetary limit imposed and therefore, the appeal filed by the Revenue can be disposed of, keeping the substantial questions of law raised in this appeal open for adjudication at a later point of time.

3. Recording the said submission, this Tax Case Appeal is dismissed for low tax effect, keeping open the substantial questions of law for adjudication at appropriate stage. No costs.

(R.S.K.,J.) **(C.S.N.,J.)**
01.10.2024

NCS : Yes/No
Index : Yes/No
KST

To

The Income Tax Appellate Tribunal
Chennai.

R.SURESH KUMAR, J.

AND
C.SARAVANAN, J.

KST

T.C.A.No.325 of 2023

01.10.2024