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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ ITA 672/2023

PR. COMMISSIONER OF INCOME TAX (CENTRAL)-2 ..... Appellant

Through: Mr. Sanjay Kumar & Ms. Easha Kadian, Advs.

versus

GARDENIA INDIA PVT. LTD. ..... Respondent

Through: Mr. Rohit Jain & Mr. Samarth Chaudhari, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **28.05.2024**

1. This appeal has been preferred against the judgment dated 31 March 2023 rendered by the Income Tax Appellate Tribunal ["**Tribunal**"] and posits the following questions of law for our consideration:

> "A. Whether on the facts and circumstances of the case and in law, the Ld. ITAT is correct in ignoring that the addition was based on "cash receipt" and the same was not recorded in the books of accounts in the normal course of business, hence it is considered as unexplained?
>
> B. Whether on the facts and circumstances of the case and in law, the Ld. ITAT has erred in not considering the "ownership" of given amounts in the hands of the assessee company as per seized documents u/s 69A of the Act?
>
> C. Whether on the facts and circumstances of the case and in law, the Ld. ITAT has erred in ignoring the fact that possession of such money during any time of the relevant year, is in itself evidence of "ownership" as per Section 69A of the Act?
>
> D. Whether on the facts and circumstances of the case and in law, the Ld. ITAT has erred in deleting the addition of Rs.22,21,26,248/-on account of bogus purchase expenditure

ignoring that the ledger account of the bogus entities were seized during the search proceedings?

E. Whether on the facts and circumstances of the case and in law, the Ld. ITAT is correct in not appreciating the findings of AO specific to each bogus entity (Shri Saraswati Steel Centre and M/s Laxmi Enterprises), which had clearly admitted to providing accommodation entries during the survey u/s 133A of the Act?"

2. We firstly take up the issue pertaining to Section 69A of the Income Tax Act, 1961 ["**Act**"]. For the purposes of appreciating the issue which arises, we deem it apposite to extract the following from the order of the Assessing Officer ["**AO**"]:

" 5.**<u>Cash Receipt Seized During the Year:</u>**

During the assessment proceedings, the assessee was issued questionnaire dated 01.02.2013 confronting all the incriminating seized documents as to the cash receipt from customers, bogus purchase bills and other receipts and was asked to explain how the income ascribed from these documents have been declared in the Income Tax returns of the assessee and two other persons to which it relates. In response to which, the assessee filed combined reply explaining all the incriminating documents and also the entities to which these belongs. On the basis of the incriminating document that assessee has surrendered total amount of Rs. 4,78,05,701/-, in the following three entities:

M/s. Gardenia India Ltd.	Rs. 2,99,05,701/-
Sh. Sanjeev Kumar Sharma	Rs. 13400,000/-
M/s. Amrapali Realtors	Rs. 45,00,000/,-
TOTAL	**Rs. 4,78,05,701/-**

5.1 The assessee has surrendered these income in the respective years to which it relates, however, with regard to cash receipt allegedly to have been received from customers on account of flats and booking of plots, the assessee has apportioned the cash receipt as per POCM and taken in the income in proportion to the completion of construction. In this regard, the details filed by the assessee have been examined vis-à-vis the seized records seized in the case and the method or surrender of income by the assessee found to be wrong as:

i) With regard to the cash receipt from customers, these are to be assessed as unexplained money if the same is not recorded in the books of accounts in the normal course of business and to be taxed as deemed income of the year to which it relates.

ii) These cash receipts will not be apportioned as per the POCM method as these are unexplained income to be taxed in the year in which they have been received and against these receipt, no deduction whatsoever would be allowed.

iii) It has also been seen that where no sale have been booked, the cash receipt acknowledged to have been received but shown as advances received which is wrong as such receipt is to be treated as unexplained money to be taxed as 'Deemed Income' u/s. 69A of the I.T. Act.

5.2 <u>Accordingly, the surrender of income made by the assessee has been reviewed and shall be taxed in the relevant year as 'Deemed income' of the year in which they have been received without apportioning/adjusting them on the basis of POCM</u>. The details of incriminating receipt relating to the assessee are as under:

DATE	PARTICULARS	DEBIT	REMARKS
	Opening Balance	5891554.00	
22/05/2009	Advance From Customer (SUSHIL UPPAL)	750000.00	Surrendered in Gardenia India Ltd. A.Y. 2010-11 S.No.4
	GB-1 A-2 Page 25 (Rajesh Kumar Verma)	40000	Surrendered in Gardenia India Ltd. A.Y. 2010-11 S.No.5
	GB-1 A-2 Page 25 ([illegible] Singh R-904)	[illegible]	Surrendered in Gardenia India Ltd. A.Y. 2010-11 S.No.7
	GB-1 A-[illegible] Page [illegible] (Purnima Nand Kumar R-404)	[illegible]75200	Surrendered in Gardenia India Ltd. A.Y. 2010-11 S.No.8
	GB-1 A-11 Page 55 (Sushil [illegible])	[illegible]	Surrendered in Gardenia India Ltd. A.Y. 2010-11 S.No.11
	GB-1 A-18 Receipt No. 1341 (Pradeep Suyam Saini R-406)	100000	Surrendered in Gardenia India Ltd. A.Y. 2010-11 S.No.13
	GB-1 A-10[illegible] Receipt No. 441 ([illegible] Ravi R-[illegible])	50000	Surrendered in Gardenia India Ltd. A.Y. 2010-11 S.No.14
	GB-1 A-[illegible] Receipt No. 1450 (Ruby Kumari R-102)	500000	Surrendered in Gardenia India Ltd. A.Y. 2010-11 S.No.15
	GB-1 A-16 Receipt No. 1451 ([illegible] R-[illegible])	500000	Surrendered in Gardenia India Ltd. A.Y. 2010-11 S.No.16
	GB-1 A-26 Receipt No. 2155 (Vivek [illegible] B-[illegible])	25000	Surrendered in Gardenia India Ltd. A.Y. 2010-11 S.No.1[illegible]

[illegible]	GB-1-A-27 [illegible] Receipt No. 2563 [illegible]	[illegible]1000	Surrendered in Gardenia India Ltd. A.Y. 2010-11 [illegible]
[illegible]	GB-1-AA-2 [illegible] Page No. 5 & 6 (Ruby Kumari R-II-102)	[illegible]0500	Surrendered in Gardenia India Ltd. A.Y. 2010-11 S.N. [illegible]
[illegible]	GB-1-AA-2 [illegible] Page No. 5 & 6 (R[illegible] Puya R-II-103)	[illegible]	Surrendered in Gardenia India Ltd. A.Y. 2010-11 S.No. 24
[illegible]	GB-1-AA-2 [illegible] Page No. [illegible] (Dr. Amina [illegible])	[illegible]26250	Surrendered in Gardenia India Ltd. A.Y. 2010-11 S.No. [illegible]
[illegible]	GB-1-AA-2 [illegible] (Jai Shree Thakur [illegible])	[illegible]3000	Surrendered in Gardenia India Ltd. A.Y. 2010-11 S.No. 25
[illegible]	GB-1-AA-2 [illegible] Page No. [illegible] (Archana Verma [illegible])	[illegible]025000	Surrendered in Gardenia India Ltd. A.Y. 2010-11 S.No. [illegible]
	TOTAL	10387450	

(illegible)

5.4 Though these transactions have been acknowledged and surrendered by the. assessee but these have not been reflected in the P & L A/c. following the POCM method as no revenue has been recognized so far. However, as per the deeming provision of Section 69A, the cash receipt found to be received during the current financial but not recorded in the books of accounts has to be treated as unexplained income of the assessee u/s. 69A of the I.T. Act.

5.5 Accordingly, cash receipt of Rs. 1,03,87,450/- received during the year on account of booking of flats is added to the income of the assessee as 'Income from Undisclosed Sources' u/s. 69A of the I.T. Act.

5.6 In the return filed by the assessee in response to notice u/s. 153A of the I.T. Act the assessee offered additional income of Rs. 82,86,651/- following the POCM method. This income is to be ignored as the incriminating documents/cash receipts have been considered u/s. 69A of the I.T. Act.

5.7. The assessee has furnished inaccurate particulars of income with regard to the cash receipt and thereby evaded the taxes, I am satisfied that penalty u/s. 271(1)(c) of the I.T. Act is also attracted in this case."

3. The Commissioner of Income Tax (Appeals) ["**CIT(A)**"], however, accorded relief to the respondent-assessee by holding that

although Section 69A of the Act is not applicable, the income in question is liable to be taxed under the head of "*Income from other sources*".

4. Regard must also be had to the fact that the respondent-assessee had duly surrendered the aforesaid income and offered it to tax. In view of the aforesaid, the Tribunal has ultimately observed as follows:

> "**5.3** We have given thoughtful consideration to the peculiar facts and circumstances of the case. <u>The Ld. DR supported the assessment order and claimed that that the Id. commissioner wrongly held that provisions of section 69A of the Act are not applicable. We observe that there is no dispute qua nature or quantum of the amount under consideration. The only dispute is regarding the year of taxability wherein the Assessee offered the amounts to tax in the respective years as per POC method, whereas the Assessing officer taxed the amounts u/s. 69 of the Act in the respective years of receipts. We further observe that the Id. Commissioner categorically held that section 69 of the Act is not applicable to the instant addition. In fact, the income from unaccounted/undisclosed business transactions is to be treated on different footings and taxed under the head "income from other sources". The Id. Commissioner also held since the amount was not recorded in the books, it did not form the part of the Revenue Receipts of the Assessee</u>. The amount was enjoyed by the Assessee on receipt basis and never recorded in the regular books of accounts, therefore, the amount has to be taxed on receipt basis and not on the basis of POC method. We do not find any reason and/or material to contradict the findings recorded by the Id. Commissioner in taking into consideration the peculiar facts and circumstances of the case and the relevant provisions of law as applicable to the issue in hand,<u> hence we are inclined not to interfere in the decision of the Id. Commissioner in holding the amount of Rs.1,04,88,750/- as taxable u/s. 56 of the Act under the head "other sources". As we have already upheld the addition hence not dwelling into the controversy raised by the Ld. DR to the effects that the Id. Commissioner wrongly held that provisions of section 69A of the Act are not applicable. Consequently, **Ground No. 1** stands dismissed</u>."

5. We find on an ex facie examination of Section 69A of the Act that the said provision was clearly not attracted since this was not a case where any money had been recovered and which had not been

reflected in the books of account. As is manifest from the findings and observations which appear in the order of assessment, the AO had only relied upon certain incriminating documents from which he sought to identify certain cash receipts. In view of the aforesaid, we are of the firm opinion that both the CIT(A) as well as the Tribunal were clearly justified in holding that Section 69A was inapplicable.

6. Proceeding then to examine the issue of bogus purchase expenditure, we find that the Tribunal has upon due consideration of the facts which were found by the CIT(A), found no justification to interfere with the same. As we view the conclusions recorded by the Tribunal in this respect, it would be manifest that the same cannot possibly be construed as giving rise to any substantial question of law.

7. The appeal consequently fails and shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 28, 2024/kk