

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

ITAT/284/2024
IA NO: GA/1/2024, GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS
DIGVIJAY VINIMAY PVT LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : January 03, 2025.

Appearance :
Mr. Tilak Mitra, Adv.
Mr. Prithu Dudhoria, Adv.
...for appellant
Mr. Siddharth Das, Adv. ...for respondent.

The Court :- We have heard learned Counsel appearing for the parties.

As the delay has been properly explained the same is condoned. The application is allowed.

This appeal by the revenue is filed under Section 260A of the Income Tax Act, 1961, is directed against the order dated 2.2.2024 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata in ITAT/700/Kol/2023 for the assessment year 2012-13. The revenue has raised the following substantial questions for consideration.

"A. Whether on the facts and in the circumstances of the case and in law the Learned National Faceless Appeal Centre [NFAC] Delhi was not justified in deleting the addition of Rs.2,45,00,000/-u/s 68 of the IT Act when the credit in the particular account books is a fresh credit for which assessee failed to establish the Identity, Creditworthiness of

shareholders and the genuineness of transaction. There is a change in the shareholding pattern when compared from the preceding year with the year under consideration to demonstrate that these are bogus transactions where such companies resort to shifting of shareholding at regular intervals from person to person. Assessee has failed to produce the directors of the shareholder company before the Assessing Officer which also demonstrate that the impugned transaction is a bogus transaction ?

B. Whether on the facts and in the circumstances of the case and in law the Learned National Faceless Appeal Centre [NFAC] Delhi was not justified in law by not considering the ratio of decision of Apex Court in the case of Pr. CIT [Central]-1, Kolkata vs NRA Iron & Steel Pvt. Ltd. [412 ITR 161] wherein it is suggested that ‘the assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the Assessing Officer failure of which, would justify addition of the said amount to the income of the assessee. In the facts and under the circumstances of the instant case, the assessee company has failed to do so other than submission of mere statements of various kinds. Thus, the decision of the Ld. NAFC is erroneous in holding that the raised share capital was not the assessee’s own income ?”

We have elaborately heard learned Advocates for the parties.

The issue involved in this appeal is whether the addition made by the assessing officer which was deleted by the Commissioner of Income Tax, Appeals [CIT(A)] and affirmed by the learned Tribunal was justified in the

facts and circumstances of the case. The assessee's case before the learned Tribunal was that all documents were provided during the course of assessment proceeding and a summon issued under Section 131 was partly complied with and two of the investor companies appeared and their statements were recorded. In spite of the same the assessing officer made the addition under Section 68 of the Act. The assessee carried the matter on appeal before [CIT(A)] who called for a remand report and interestingly in the remand report enured in favour of the assessee and it also stated in the remand report that identity and creditworthiness of the share applicants and genuineness of the transaction is proved beyond doubt and taking into consideration the said remand report the [CIT(A)] allowed the assessee's appeal which was challenged and aggrieved by the same the Revenue filed an appeal before the learned Tribunal. The Tribunal re-appreciated the factual position also noted that the paper book containing 129 pages of documents and details were furnished before the [CIT(A)] and the remand report was wholly in favour of the assessee, dismissed the appeal filed by the revenue.

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

Thus, the appeal fails and dismissed.

Consequently, the applications also stand closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)