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ITAT/160/2022
IA No.GA/2/2022

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

PRINCIPAL COMMISSIONER OF
INCOME TAX, CENTRAL-2, KOLKATA

-Versus-

M/S. GOLDEN GOENKA FINCORP LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 13th January, 2023

Appearance :
Mr. Soumen Bhattacharjee, Adv.
...for the appellant.

Mr. Abhratosh Majumdar, Adv.
Mr. Avra Mazumdar,, Adv.
Mr. Kausheyo Roy, Adv.
Mr.Binayak Gupta, Adv.
Mr. Sumon Bhowmick, Adv.
Mr. Samrat Das, Adv.
...for the respondent.

The Court : The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, (the 'Act' for brevity) is directed against the order dated 16th September, 2020 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in IT(SS)A No.1/Kol/2019 and

IT(SS)A No.2/Kol/2019 for the assessment years 2013-14 and 2015-16.

The revenue has raised the following substantial questions of law for consideration:

"i) Whether the Learned Tribunal has committed substantial error in law by deleting the addition made under section 68 of the Income Tax Act, 1961 on account of unexplained cash credit?

ii) Whether the Learned Tribunal has committed substantial error in law by distinguishing the judgment of the Hon'ble Madras High Court in the case of B. Kishore Kumar Vs. DCIT reported in (2014) 52 taxmann.com 449 (Madras) and judgment of Rajasthan High Court in the case of M/s. Bannalal Jat Construction Vs. Assistant Commissioner of Income Tax in Income Tax Appeal No.140/2018, judgment dated 31.08.2018 on the principles that addition was made on the basis of admission of the assessee and reliability, importance and sanctity of admission made during search could be refuted only by cogent and convincing evidence?

iii) Whether the Learned Tribunal has committed substantial error in law by holding that when assessee makes certain allegations during the search proceeding and denies the content of statement recorded from him under section 132(4) of the Income Tax Act, 1961, the burden shifts to the revenue to prove that the same is income?

We have heard Mr. Soumen Bhattacharjee, learned standing counsel for the appellant/revenue and Mr. Abhratosh Majumdar, learned senior counsel assisted by Mr. Avra Mazumdar and Mr. Kausheyo Roy, learned Advocates for the respondent/assessee.

The short issue which falls for consideration is whether the assessing officer was justified in treating the sum of Rs.25 crores received by the assessee by way of share application money as the assessee's undisclosed income. On going through the order passed by the Commissioner of Income Tax (Appeals) [CIT(A)] and the learned Tribunal, we find that the assessment was so completed by the assessing officer solely relying upon a statement which was recorded from the assessee on 17th March, 2015. It is not disputed that during the course of search operations, that is, on the last date of authorisation on 21st April, 2015, the assessee had retracted the statement given earlier as well as the affidavit filed by him earlier. That apart, the assessee has also filed another affidavit contending that coercive measures were resorted to and a statement from him was obtained.

This retraction was taken note of by the [CIT(A)] and it has been factually recorded that there was very elaborate evidence available before the Assessing Officer to treat the said sum as undisclosed income of the assessee. The learned

Tribunal on its part re-appreciated the factual position and has affirmed the order passed by the CIT(A).

We find that the entire matter revolves on facts which has been appreciated and re-appreciated by the CIT(A) and the Tribunal respectively and we find that there is no substantial question of law arising for consideration in this appeal.

Mr. Soumen Bhattacharjee, learned standing counsel appearing for the appellant/revenue placed reliance on the decision of the High Court of Punjab and Haryana in the case of *Gurdev Agro Engineers, Bhawanigarh vs. Gurdev Agro Engineers, Bhawanigarh, 2016 SCC Online P&H 5506*.

On going through the facts in the said case, we find that in the said case the CIT(A) affirmed the order passed by the Assessing Officer after noting that during the course of survey there were several supporting documents to the voluntary statement made by the assessee therein. Furthermore, in the said case the retraction was done after three months and it was found that there was no satisfactory explanation for such delay.

Hence, we find the decision in *Gurdev Agro Engineers, Bhawanigarh* is clearly distinguishable on facts.

Thus, for the above reasons, the appeal (ITAT/160/2022) fails and is dismissed.

The application for stay being IA No.GA/2/2022 is closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)