
(2014) 03 CAL CK 0011

In the Calcutta High Court

Case No : ITAT No. 155 of 2013 and GA No. 3109 of 2013

CIT

APPELLANT

Vs

Ellora Mercantile Pvt. Ltd.

RESPONDENT

Date of Decision : 07-03-2014

Acts Referred:

Citation : (2014) 03 CAL CK 0011

Hon'ble Judges : Sudip Ahluwalia, J;G.C. Gupta, J

Bench : Division Bench

Advocate : Mamta Bhargav, Advocate for the Appellant; R. Bharadwaj, Advocate for the Respondent

Judgement

1. The Court: The appeal has been preferred by the revenue against a judgment and order dated 18th April, 2013 by which the learned Tribunal dismissed the appeal of the revenue. The facts and circumstances of this case, briefly stated, are as follows:

The assessee claimed to have received a sum of Rs. 11 lakhs in cash on account of share application money. A notice u/s 271D was issued by the assessing officer on the ground that receipt of the sum of Rs. 11 lakhs in cash was in violation of the provisions of Section 269 SSS. The assessee, however, did not appear before the assessing officer. In the circumstances, the order dated 30th April, 2010 was passed imposing penalty of Rs. 10,80,000/-.

2. Aggrieved by the order of the assessing officer, an appeal was preferred by the assessee before the CIT(A) who passed his order dated 6th August, 2012 holding that share application money could not be treated as deposit within the meaning of provisions of Section 269 SS. Therefore, the order of the assessing officer was set aside.

3. The Tribunal dismissed the appeal of the revenue on the same ground.

4. Mr. Bharadwaj, learned advocate appearing for the assessee, submitted that

the judgment in the case of Bhalotia Engg. Works Pvt. Ltd. vs. C.I.T. relied upon by the assessing officer, has no manner of application to the facts and circumstances of this case because in that case the so-called share application money was refunded. But in this case, according to him, shares were in fact issued. This fact does not appear to have been reflected in any of the three judgments, which are before us. He submitted that share application money can not be treated as a deposit. The term "deposit" has been defined in Section 269Y as also in Section 269SS.

5. Ms. Bhargav submitted that the share application money does, in fact, partake the character of a deposit because the company has to treat the money of the application as a deposit and has to refund the same, in case the shares are not issued to them. She submitted that it can not be said that share application money is not a deposit at all. On the top of that, she submitted that not only the company has to refund the money in case shares are not issued, but the company is also liable to pay interest on that. She, accordingly, contended that it is not a correct approach to hold that share application money is not a deposit.

6. These questions were not gone into. As a matter of fact, as already indicated, the plea that shares were in fact issued, was never taken either before the CIT(A) or before the learned Tribunal. The assessee did not appear before the assessing officer.

7. Accordingly, the order under challenge passed by the learned Tribunal, the orders passed by the CIT(A) and the assessing officer are set aside. The matter is remanded to the assessing officer for reconsideration of the matter on facts and law after giving appropriate opportunity of hearing to the assessee.

8. The appeal is, thus, disposed of.