

**Court No. - 39****Case :-** INCOME TAX APPEAL No. - 46 of 2019**Appellant :-** Principal Commissioner Of Income Tax**Respondent :-** M/S Pnc Infratech Ltd.**Counsel for Appellant :-** Manu Ghildyal**Counsel for Respondent :-** Rahul Agarwal**Hon'ble Saumitra Dayal Singh,J.****Hon'ble Shiv Shanker Prasad,J.**

1. Heard Sri Manu Ghildyal, learned counsel for the appellant-revenue and Ms. Upasna Agrawal, Advocate, holding brief of learned counsel for the respondent-assessee.

2. Present appeal has been filed under Section 260-A of the Income Tax Act, 1961, (hereinafter referred to as the 'Act') arising from the order dated 10.10.2018 passed by the Income Tax Appellate Tribunal, Agra Bench, Agra in Income Tax Appeal No. 311/Agra/2017 for A.Y. 2010-11. By that order, the learned Tribunal has dismissed the appeal filed by the revenue and thus confirmed the order passed by the CIT (Appeals) dated 28.02.2017, allowing the assessee's appeal, deleting additions made under Section 68 of the Act with respect to share capital Rs. 19 crores invested in the assessee company by three entities namely - M/s Jewellock Trexim Pvt. Ltd., M/s Alberta Merchants Pvt. Ltd. and M/s Gurprasad Holding Pvt. Ltd.

3. The present appeal has been pressed on the following substantial question of law :

*"Whether on the facts and circumstances of the case and in law, the order of the ITAT was perverse on the ground that while deleting the addition of unexplained credits in the hands of assessee company, it did not allude to the material facts, chain of transactions and probative value of the statements and other incriminating facts as pointed out in the assessment order of the assessee as well as that of the investing entities, thus violating the ratio of judgment in case of Sudarshan Silk and Sarees 300 ITR 205 (SC)?"*

4. Having heard learned counsel for the parties and having perused the record, we find, substantial question of law being raised does not arise in the present facts. It is undoubtedly true, the assessee was a recipient of share capital Rs. 19 crores from the three entities (described above) for A.Y. 2010-11. At the same time, it is not in dispute that the said money was invested through banking channels. It is also not doubted, the investors had duly disclosed such investment in their books. At the same time, certain doubts and suspicions arose with the revenue authorities arising from search proceedings conducted in the case of the assessee as also the investors. Therein certain statements were recorded ostensibly of directors and responsible functionaries of the companies, involved in the transaction. Relying on those statements, investment of Rs. 19 crores made in the share capital of the assessee company was proposed to be disbelieved and added by way of unexplained cash credit entry.

5. The assessing authority referred to certain statements of Sri Bishnu Kumar Banka recorded during the assessment proceedings as also statement of Sri Lavlesh Jain recorded during search proceedings. There is no doubt that the said Bishnu Kumar Banka and Lavlesh Jain were directors of the company Jewellock Trexim Pvt. Ltd. At the same time, perusal of the statement of Bishnu Kumar Banka recorded during assessment proceedings reveals, he claimed ignorance as to the actual business transaction of that company. He also claimed ignorance as to the investment of Rs. 7 crores 50 lakhs made by M/s Jewellock Trexim Pvt. Ltd. in the assessee company. He further stated, the actual functional director of the company was Mr. Lavlesh Jain.

6. Thus, Sri Bishnu Kumar Banka did not prove or disprove the fact of investment made by M/s Jewellock Trexim Pvt. Ltd. in

the assessee company. He only claimed ignorance. On its part, the assessing authority failed to call or examine Sri Lavlesh Jain during the assessment proceedings. Instead, he relied on the unproven/untested statement of the said Sri Lavlesh Jain, allegedly recorded during the search proceedings conducted against M/s Jewellock Trexim Pvt. Ltd.

7. Other than the above two statements, the assessing authority further relied on the statements of Sri Raj Kumar Dokania, Sri Sushil Kumar Jain and Sri Murari Lal again recorded during search proceedings. Clearly, no material witness was examined during assessment proceedings. Yet, the assessing authority without allowing the assessee any opportunity to cross-examine any such witness proceeded to rely on such *ex parte* statements.

8. Other than the statements noted above, there is no *iota* of evidence to establish that investment of Rs. 19 crores made in the assessee company by way of share capital was bogus or not genuine.

9. In such circumstances, the CIT (Appeals) has reasoned, the doubts and suspicions howsoever strong may never lead to adverse findings against the assessee. He has categorised the findings recorded by the assessing authority as conjectural being not based on any cogent material or evidence on record.

10. It is the above findings recorded by the CIT (Appeals) that have been sustained by the learned Tribunal. On specific query made, learned counsel for the revenue could not point to any evidence existing on record as may have led to the conclusion that any part of the investment made in the assessee company by the three investing entities was false or bogus.

11. *Prima facie*, in face of investment made through banking channel which according to learned counsel for the revenue was duly disclosed in the regular returns of the investing entities,

there does not exist any presumption or room to disbelieve the investment made in the assessee company.

12. The burden to prove otherwise rested squarely on the revenue authorities. Unless the initial onus had been discharged by leading some evidence that may have led itself to the conclusion that the investment was never made, the burden that was cast on the revenue remained undischarged.

13. Accordingly, the findings of fact recorded by the learned Tribunal, confirming the order of the CIT (Appeals) is seen to be in accordance with law and based on material consideration. The same can never be described as perverse. The question of law raised does not arise.

14. The present appeal lacks merit and is accordingly **dismissed**. No order as to costs.

**Order Date :-** 30.11.2023

Abhilash

(Shiv Shanker Prasad, J.) (S. D. Singh, J.)