

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Income Tax Appeal No. 136/2018

Principal Commissioner Of Income Tax Central , Jaipur.

----Appellant

Versus

M/s Motisons Entertainment India Pvt. Ltd. , 7Th Floor, Sb-110
Motisons Tower, Lal Kothi, Tonk Road, Jaipur.

----Respondent

Connected With

D.B. Income Tax Appeal No. 126/2018

Principal Commissioner Of Income Tax Central , Jaipur.

----Appellant

Versus

M/s Rainbow Buildcon Private Ltd , Sb-110, 7Th Floor, Tonk
Road, Jaipur, Rajasthan.

----Respondent

D.B. Income Tax Appeal No. 127/2018

Principal Commissioner Of Income Tax Central , Jaipur.

----Appellant

Versus

M/s Motisons Global Pvt. Ltd. , 7Th Floor, Sb-110, Motisons
Tower Lal Kothi, Tonk Road, Jaipur, Rajasthan.

----Respondent

D.B. Income Tax Appeal No. 128/2018

Principal Commissioner Of Income Tax Central , Jaipur.

----Appellant

Versus

M/s Motisons Global Pvt. Ltd. , 7Th Floor, Sb-110, Motisons
Tower Lal Kothi, Tonk Road, Jaipur, Rajasthan.

----Respondent

D.B. Income Tax Appeal No. 129/2018

Principal Commissioner Of Income Tax Central , Jaipur.

----Appellant

Versus

M/s Motisons Global Pvt. Ltd. , 7Th Floor, Sb-110, Motisons Tower Lal Kothi, Tonk Road, Jaipur, Rajasthan.

----Respondent

D.B. Income Tax Appeal No. 130/2018

Principal Commissioner Of Income Tax Central , Jaipur.

----Appellant

Versus

M/s Shivansh Buildcon Pvt. Ltd. , A-26, Krishna Nagar, Lal Kothi, Jaipur, Rajasthan.

----Respondent

D.B. Income Tax Appeal No. 137/2018

Principal Commissioner Of Income Tax Central , Jaipur.

----Appellant

Versus

M/s Motisons Entertainment India Pvt. Ltd. , 7Th Floor, Sb-110 Motisons Tower, Lal Kothi, Tonk Road, Jaipur.

----Respondent

D.B. Income Tax Appeal No. 138/2018

Principal Commissioner Of Income Tax Central , Jaipur.

----Appellant

Versus

M/s Bholenath Real Estate Private Ltd. , 248, Musaraf Bhawan, Haldiyon Ka Rasta, Jaipur, Rajasthan.

----Respondent

D.B. Income Tax Appeal No. 139/2018

Principal Commissioner Of Income Tax Central , Jaipur.

----Appellant

Versus

M/s Motisons Entertainment India Pvt. Ltd. , 7Th Floor, Sb-110 Motisons Tower, Lal Kothi, Tonk Road, Jaipur.

----Respondent

D.B. Income Tax Appeal No. 162/2018

The Pr. Commissioner Of Income Tax Central , Jaipur

----Appellant

Versus

M/s Motisons Buildtech Pvt. Ltd. , B-9, Vivekanand Marg, C-Scheme, Jaipur, Rajasthan

----Respondent

D.B. Income Tax Appeal No. 165/2018

The Pr. Commissioner Of Income Tax Central , Jaipur

----Appellant

Versus

M/s Motisons Buildtech Pvt. Ltd. , B-9, Vivekanand Marg, C-Scheme, Jaipur Raj.

----Respondent

D.B. Income Tax Appeal No. 168/2018

The Pr. Commissioner Of Income Tax Central , Jaipur

----Appellant

Versus

M/s. Motisons Buildtech Pvt. Ltd. , B-9, Vivekanand Marg, C-Scheme, Jaipur Rajasthan

----Respondent

For Appellant(s) : Mr. Siddarth Bafna for Mr. Anil Mehta

For Respondent(s) :

HON'BLE MR. JUSTICE KALPESH SATYENDRA JHAVERI

HON'BLE MR. JUSTICE ASHOK KUMAR GAUR

Judgment

31/07/2018

1. Delay in filing the appeals is condoned. Applications u/s 5 of the limitation Act are allowed. Other defects are waived and applications for the same are also allowed.
2. In all these appeals common question of law and facts are involved hence they are decided by this common judgments.
3. By way of these appeals, the appellant has assailed the judgment and order of the tribunal whereby tribunal has dismissed the appeals of the department.

4. Counsel for the appellant has framed following substantial question of law:-

In D.B. ITA No. 136/2018:-

1. whether, on the fact and the circumstances of the case the Hon'ble ITAT was justified in upholding the decision of the CIT(A) which erred in deleting the addition of Rs. 1.95 crore/- made under section 56(1) of the Act ignoring the fact that neither any business activity was performed nor any business income has been shown by these concerns from whom share application money has been received, hence, it is the unaccounted money of the assessee company which have been introduced in the garb of share application money by these concerns which don't have any worth to invest at such high premium.

In D.B. ITA No.126/2018:-

1. whether, on the fact and the circumstances of the case the Hon'ble ITAT was justified in upholding the decision of the CIT(A) which erred in deleting the addition of Rs. 2 crore/- made under section 56(1) of the Act ignoring the fact that neither any business activity was performed nor any business income has been shown by these concerns from whom share application money has been received, hence, it is the unaccounted money of the assessee company which have been introduced in the garb of share application money by these concerns which don't have any worth to invest at such high premium.

In D.B. ITA No.127/2018:-

1. whether, on the fact and the circumstances of the case the Hon'ble ITAT was justified in upholding the decision of the CIT(A) which erred in deleting the addition of Rs. 2 crore/made under section 56(1) of the Act ignoring the fact that neither any business activity was performed nor any business income has been shown by these concerns from whom share application money has been received, hence, it is the unaccounted money of the assessee company which have been introduced in the garb of share application money by these concerns which don't have any worth to invest at such high premium.

In D.B. ITA No. 128/2018:-

1. whether, on the fact and the circumstances of the case the Hon'ble ITAT was justified in upholding the decision of the CIT(A) regarding in deletion of the addition of Rs.6,96,50,000/- made under section 56(1) of the Act ignoring the

fact that neither any business activity was performed nor any business income has been shown by these concerns from whom share application money has been received, hence, it is the unaccounted money of the assessee company which have been introduced in the garb of share application money by these concerns which don't have any worth to invest at such high premium.

In D.B. ITA No.129/2018:-

1. Whether, on the fact and the circumstances of the case the Hon'ble ITAT was justified in deleting the entire addition of Rs.42,07,29,600/- made under section 56(1) of the Act ignoring the fact that assets of the assessee company don't commensurate to premium charged and further ignoring the fact that the neither any business activity was performed nor any business income has been shown by the assessee.
2. Whether on the facts and the circumstances of the case the Hon'ble ITAT was justified in holding that section 68 of the IT Act does not empower the CIT(A) to make addition under this Act, as the section 68 empowers only the assessing officer to make addition.
3. whether on the facts and the circumstances of the case the Hon'ble ITAT was justified in holding that the addition under section 68 of the IT Act can only be made by the assessing officer by relying upon the definition of assessing officer as provided in section 2(7A) of the IT Act.
4. whether on the facts and the circumstances of the case the Hon'ble ITAT was justified ignoring the provisions of section 251(1)(a) of the IT Act, 1961 which specifically empowers the CIT(A) in an appeal to confirm, reduce, enhance or annual the assessment;
5. whether on the facts and the circumstances of the case of the Hon'ble ITAT was justified in ignoring the explanation of section 251(2) of the IT Act which states that in disposing of an appeal, the [commissioner (appeal)] may consider and decide any matter arising out of the proceeding in which the order appealed against was passed notwithstanding that such matter was not raised before the [commissioner (appeal)] by the appellant.

In D.B. ITA No. 130/2018:-

1. Whether, on the fact and the circumstances of the case the Hon'ble ITAT was justified in uploading the decision of the CIT(A) regarding in deletion of the 865000/- out of the total addition of Rs. 9000000/- made under section 56(1) of the Act ignoring the fact that assets of

the assessee company don't commensurate to premium charged and further ignoring the fact that the neither any business activity was performed nor any business income has been shown by the assessee.

2. Whether on the facts and the circumstances of the case the Hon'ble ITAT was justified in holding that section 68 of the IT Act does not empower the CIT(A) to make addition under this Act, as the section 68 empowers only the assessing officer to make addition.

3. whether on the facts and the circumstances of the case the Hon'ble ITAT was justified in holding that the addition under section 68 of the IT Act can only be made by the assessing officer by relying upon the definition of assessing officer as provided in section 2(7A) of the IT Act.

4. whether on the facts and the circumstances of the case the Hon'ble ITAT was justified ignoring the provisions of section 251(1)(a) of the IT Act, 1961 which specifically empowers the CIT(A) in an appeal to confirm, reduce, enhance or annual the assessment;

5. whether on the facts and the circumstances of the case of the Hon'ble ITAT was justified in ignoring the explanation of section 251(2) of the IT Act which states that in disposing of an appeal, the [commissioner (appeal)] may consider and decide any matter arising out of the proceeding in which the order appealed against was passed notwithstanding that such matter was not raised before the [commissioner (appeal)] by the appellant.

In D.B. ITA No.137/2018:-

1. Whether, on the fact and the circumstances of the case the Hon'ble ITAT was justified in uploading the decision of the CIT(A) regarding in deletion of the 63650000/- out of the total addition of Rs. 77800000/- made under section 56(1) of the Act ignoring the fact that assets of the assessee company don't commensurate to premium charged and further ignoring the fact that the neither any business activity was performed nor any business income has been shown by the assessee.

2. Whether on the facts and the circumstances of the case the Hon'ble ITAT was justified in holding that section 68 of the IT Act does not empower the CIT(A) to make addition under this Act, as the section 68 empowers only the assessing officer to make addition.

3. whether on the facts and the circumstances of the case the Hon'ble ITAT was justified in holding that the addition under section 68 of the IT Act

can only be made by the assessing officer by relying upon the definition of assessing officer as provided in section 2(2A) of the IT Act.

4. whether on the facts and the circumstances of the case the Hon'ble ITAT was justified ignoring the provisions of section 251(1)(a) of the IT Act, 1961 which specifically empowers the CIT(A) in an appeal to confirm, reduce, enhance or annual the assessment;

5. whether on the facts and the circumstances of the case of the Hon'ble ITAT was justified in ignoring the explanation of section 251(2) of the IT Act which states that in disposing of an appeal, the [commissioner (appeal)] may consider and decide any matter arising out of the proceeding in which the order appealed against was passed notwithstanding that such matter was not raised before the [commissioner (appeal)] by the appellant.

In D.B. ITA No.138/2018:-

1. whether, on the fact and the circumstances of the case the Hon'ble ITAT was justified in upholding the decision of the CIT(A) which erred in deleting the addition of Rs. 2.9 crore/- made under section 56(1) of the Act ignoring the fact that neither any business activity was performed nor any business income has been shown by these concerns from whom share application money has been received, hence, it is the unaccounted money of the assessee company which have been introduced in the garb of share application money by these concerns which don't have any worth to invest at such high premium.

In D.B. ITA No.139/2018:-

1. whether, on the fact and the circumstances of the case the Hon'ble ITAT was justified in upholding the decision of the CIT(A) which erred in deleting the addition of Rs. 3.4 crore/- made under section 56(1) of the Act ignoring the fact that neither any business activity was performed nor any business income has been shown by these concerns from whom share application money has been received, hence, it is the unaccounted money of the assessee company which have been introduced in the garb of share application money by these concerns which don't have any worth to invest at such high premium.

In D.B. ITA No.162/2018

1. Whether, on the fact and the circumstances of the case the Hon'ble ITAT was justified in uploading the decision of the CIT(A) regarding in deletion of Rs.3.03 Cr made under section 56(1)

of the Act ignoring the fact that assets of the assessee company don't commensurate to premium charged and further ignoring the fact that the neither any business activity was performed nor any business income has been shown by the assessee.

2. Whether on the facts and the circumstances of the case the Hon'ble ITAT was justified in holding that section 56(1) of the IT Act does not empower the CIT(A) to make addition under this Act, as the aforesaid amount could have been taxed under section 68 of the IT Act.

3. whether on the facts and the circumstances of the case the Hon'ble ITAT was justified in holding that the addition under section 68 of the IT Act can only be made by the assessing officer by relying upon the definition of assessing officer as provided in section 2(2A) of the IT Act.

In D.B. ITA No. 165/2018:-

1. Whether, on the fact and the circumstances of the case the learned ITAT is justified in upholding the decision of the CIT(A) deleting the addition of Rs.24,20,479/- made by the Assessing Officer by disallowing the expenses as assessee has not started its business activity by ignoring the decision of the Hon'ble Supreme Court of India in the case of Tuticorin Alkali Chemicals and Fertilizers Pvt. Ltd. reported in 227 ITR 172.

In D.B. ITA No. 168/2018:-

1. Whether, on the fact and the circumstances of the case the Hon'ble ITAT was justified in uploading the decision of the CIT(A) regarding deletion of Rs 2,86,27,500/- made under section 56(1) of the Act ignoring the fact that assets of the assessee company don't commensurate to premium charged and further ignoring the fact that the neither any business activity was performed nor any business income has been shown by the assessee.

2. Whether on the facts and the circumstances of the case the Hon'ble ITAT was justified in holding that section 56(1) of the IT Act does not empower the CIT(A) to make addition under this Act, as the aforesaid amount could have been taxed under section 68 of IT Act.

3. whether on the facts and the circumstances of the case the Hon'ble ITAT was justified in holding that the addition under section 68 of the IT Act can only be made by the assessing officer by relying upon the definition of assessing officer as provided in section 2(2A) of the IT Act.

4. whether on the facts and the circumstances of the case the Hon'ble ITAT was justified in holding

that the provisions of section 251(1)(a) of the IT Act, 1961 which specifically empowers the CIT(A) in an appeal to confirm, reduce, enhance or annual the assessment;

5. whether on the facts and the circumstances of the case of the Hon'ble ITAT was justified in holding that the explanation of section 251(2) of the IT Act which states that in disposing of an appeal, the [commissioner (appeal)] may consider and decide any matter arising out of the proceedings in which the order appealed against was passed notwithstanding that such matter was not raised before the [commissioner (appeal)] by the appellant.

5. Counsel for the appellant has taken us to the order of AO, CIT(A) and tribunal and thereafter contended that both CIT(A) as well as Tribunal have erred in deleting the addition of Rs.1.95 crore which was made u/s 56(1). However, the tribunal while considering the matter has discussed the law as well as factual matrix of the case. In our considered opinion, this is more an appreciation of facts rather question of law.

6. In that view of the matter, no substantial question of law arises.

7. Hence, the appeals stand dismissed.

(ASHOK KUMAR GAUR),J

(K.S.JHAVERI),J