

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

IA NO: GA/1/2017
(OLD NO. GA/2811/2017)
IN
ITAT/299/2017

PRINCIPAL COMMISSIONER OF INCOME TAX-I, KOLKATA
VS.
KOLKATA ASSAM ROADLINES PVT. LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date: November 30, 2021.

Appearance :
Mr. S. Roy Chowdhury, Adv.
... for the appellant

The Court : This appeal by the Revenue filed under Section 260A of the Income Tax Act, 1961 (the Act, in brevity) is directed against the order dated 5th April, 2017 passed by the Income Tax Appellate Tribunal, Kolkata Bench "C", Kolkata in ITA No. 1524/Kol/2014 for assessment year 2010-11.

The Revenue has raised the following substantial question of law for consideration:

1. Whether on the facts and circumstances of the case the Tribunal was justified in law in upholding the order of the Commissioner of Income Tax [Appeals] by which he deleted the disallowance of Rs.99,60,000/- and Rs.6,48,98,583/- under section 40[a][ia] of the Act made by the Assessing Officer and its purported findings in this regard are arbitrary, unreasonable and perverse ?

We have heard Mr. Roy Chowdhury, learned standing counsel for the appellant/Revenue.

The assessee filed his return of income for the assessment year under consideration [assessment year 2010-11] disclosing a total income of Rs.6,33,102/-. The case was processed under section 143[1] of the Act and, subsequently selected for scrutiny and notices under sections 143[2] and 142[1] of the Act was issued and the case was discussed with the authority to explain the case of the assessee. Amongst other things the issue which is subject matter of this appeal is whether the assessee had violated the provision of section 40[a][ia] of the Act in respect of the payment for lorry hire charges on the sole ground that they have not filed the declaration in Form 15-I before payment or credit of such charges. Consequently, the Assessing Officer by order dated 26th March, 2013 held that the assessee had violated the provision of section 40[a][ia] of the Act in respect of lorry hire charges and the same was disallowed and added back to the total income return.

Aggrieved by the same, the assessee filed appeal before the Commissioner of Income Tax [Appeals]-I. The assessee had produced the form of declaration as also the relevant details including the PAN number of the carriers. These documents were accepted as additional evidence under rule 46A of the Income Tax Rules. The remand report was called for by the Assessing Officer, who on examining the documents and the details of the carriers did not render any adverse opinion on those documents. Thus, taking note of the fact situation and that the assessee had been able to produce Form 15-I declaration

from the truck owners as well as the PAN number details of the truck owners, the CIT[A] granted relief to the assessee. The Revenue being aggrieved by such order preferred appeal before the Tribunal. The Tribunal reconsidered the factual position and found that the CIT[A] was justified in permitting the assessee to produce the documents at the appellate stage, examined the remand report and found that there is no justification for denying the relief to the assessee on a technical ground. In this regard, reliance was placed on a decision of the High Court of Madras in the case of ITO vs. Adi Sankara Spinning Mills Pvt. Ltd. in Tax Case No.1194 of 2010 dated 21.12.2010. Accordingly, the hold that this being a technical breach it can be condoned with regard to the disallowance of freight charges on the sum of Rs.6,48,98,583/- on the ground of non-deduction of tax. The Tribunal found that the relevant amendment was effective from 1.4.2009 and is applicable for the whole of the year, that is for the whole assessment year 2010-11. The Tribunal noted that the CIT[A] has rendered a finding that the total payments made during the period 1.4.2009 to 30.9.2009 was only Rs.5,99,81,049/- and not Rs.6,48,98,583/- as arrived at by the Assessing Officer on an estimation basis. Further, the Tribunal noted that even for the payment for the first half of the year the assessee had obtained form 15-I for declaration and had submitted the same during the appellate proceeding, which were subject to remand proceeding for verification and no adverse inference was drawn on the same by the Assessing Officer. The assessee apart from sustaining their case on facts placed reliance on the decision of High Court of Gujarat in CIT vs. Valibhai Khanbhai Mankad in Tax Appeal No.1182

of 2011 dated 1.10.2012. The Tribunal after noting the said decision, held that in the light of the factual findings recorded by us and also following the decision of the Gujarat High Court, the disallowance under section 40[a][ia] as set aside by CIT[A] was affirmed. It is the submission of the learned senior standing counsel for the appellant/revenue that as against the decision of the High court of Gujarat in the aforementioned decision the Revenue has filed a Special Leave Petition and the same is still pending.

As noted above, the Tribunal proceeded to reconsider the case noted by the CIT[A] and granted relief to the assessee and decision of the Tribunal was solely based on the decision of the High Court of Gujarat, which is not subject matter of appeal before the Hon'ble Supreme Court. Therefore, we are of the view that the case on hand is entirely factual, which has been considered and analysed by the CIT[A] while granting relief to the assessee and re-examined by the Tribunal while affirming the order passed by the CIT[A].

Thus, we find that there is no substantial question of law arising for consideration in this appeal. Consequently, the appeal fails and is dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)