Form No.(J2)

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

Present :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

A N D

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

ITA/13/2018

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
-Versus-
M/S. AHW STEELS LIMITED

For the Appellant: ***Mr. Smarajit Roychowdhury, Adv.***
Mr. Manabendranath Bandopadhyay, Adv.

For the Respondent: Mr. Farhan Ghaffar. Adv.

Heard on : 20.01.2022

Judgment on : 20.01.2022

T. S. SIVAGANANAM, J. : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated February 3, 2016 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the 'Tribunal' in short) in ITA/960/Kol/2012 for the assessment year 2006-07.

The appeal has been entertained on the following substantial question of law:

> *Whether the decision of the Income Tax Appellate Tribunal in affirming the order of the Commissioner of Income Tax (Appeals) is perverse having regard to the materials available on records and in particular the evidence of Chief Finance Officer of the Firm with whom the assessee is alleged to have had transaction ?*

We have heard Mr. Smarajit Roychowdhury, learned counsel assisted by Mr. Manabendranath Bandopadhyay, learned advocate for the appellant/revenue and Mr. Farhan Ghaffar, learned counsel for the respondent/assessee.

The revenue has challenged the order passed by the Tribunal granting relief to the assessee on the ground that the evidence of the Chief Finance Officer did not affirm with whom the assessee is alleged to have had transaction, which was not properly appreciated leading to perversity in the order of the Tribunal. The assessee filed their returns of income for the assessment year under consideration (A.Y. 2006-07) reporting a loss of Rs.2,58,03,527/-. The return was duly processed under Section 143(3) of the Act. The assessee is engaged with the business of manufacturing of steel and trading of iron and steel products. The issue which is subject-matter of consideration in this appeal is with regard to unexplained credits which has been dealt with by the assessing officer in paragraph 4 of his order dated 31st December, 2008 under Section 143(3) of the Act. The assessing officer held that the reconciliation submitted by the assessee is unacceptable and accordingly the excess amount was credited as unexplained credit under Section 68 of the Act. Aggrieved by the same, the assessee preferred appeal before the Commissioner of Income Tax (Appeals)-I, Kolkata (CIT(A)). By the order dated 29th March, 2012 the appeal was allowed. The revenue, being aggrieved by such order, preferred appeal to the Tribunal which was dismissed by the impugned order dated 3rd February, 2016.

We have perused the finding rendered by the CIT(A) qua the statements of the Chief Finance Officer which could be seen from paragraph 3 of the order passed by the CIT(A). The CIT(A) pointed out that the Chief Finance Officer was produced by the assessee company themselves before the assessing officer and a statement was recorded wherein he has stated that cheques were actually received on 31st March, 2006. There is an error committed by the Data Entry Operators while entering the cheque numbers. CIT(A) after noting the statement given by the Chief Finance Officer proceeded to discuss as to the effect of such statement. The CIT(A) also took note of the remand report which was called for by him and submitted by the assessing officer and ultimately the assessing officer rejected the stand taken by the Chief Finance Officer and also observed that the reply given by him was absolutely vague. Further, the CIT(A) also noted the various question which have been posed to the Chief Finance Officer and while answering question no.6, though he had stated that he could produce the bank statement, he did not produce the same. The other documents and letters which were placed were also scrutinized by the CIT(A) and more particularly, the reconciliation statement. We find that CIT(A) has done an elaborate exercise to examine each one of the items in the reconciliation statement and also found that they were duly supported by records and pointed out that the assessee has produced documents including the copy of the bank account maintained by the Bank of India. However, the other party namely, Ram Swaroop Industrial Corporation never produced its bank account to substantiate its transaction. Furthermore, it was pointed that the assessing officer did not find any evidence of any other bank account in the name of the assessee company. Further, the CIT(A) held that the assessee was not given opportunity by the assessing officer to cross-examine the Chief Finance Officer after taking note of the notings in the order sheet which was placed before him. Thus, taking into consideration this factual material, the CIT(A) pointed out that even at the assessment stage no evidence was available in the form of road challan or any accepted bills were produced before the assessing officer and, therefore, held that the addition was based on conjecture and surmise without any evidence. This finding was tested by the tribunal for its correctness. The tribunal on its part re-examined the entire facts and in particular the reconciliation statement filed by the assessee. From the statement recorded from the CFO the tribunal found on facts that the reconciliation and the explanation was duly supported by evidence which were on record. That apart, the assessee was called upon to explain various details which formed part of the addition made under Section 68 of the Act by the assessing officer and the Tribunal has recorded that the assessee has explained before it in entirety the reconciliation and also explained all the discrepancies. It was further pointed out by the tribunal that the AO ought to have asked to produce the bills and evidence of delivery of materials such as road challan and accepted challan copy etc. and no enquiry was made by the assessing officer in this regard and he has been swayed entirely by the statement of the CFO who was not allowed to be cross-examined. Thus, the tribunal on facts, concluded that the reconciliation is supported by evidence which is on record and there is no difference in the balance sheet and in the books of accounts of the assessee and accordingly dismissed the appeal filed by the revenue.

The above factual discussion has been set out by us in the preceding paragraphs to demonstrate that the case on hand involves adjudication and re-adjudication into facts. This exercise has been done by the CIT(A) as well as the tribunal and we are precluded from doing such an exercise in an appeal filed under Section 260A of the Act where we are required to decide the question of law which in our considered opinion does arise in the instant case.

In the result, the appeal filed by the revenue is dismissed.

(**T.S. SIVAGNANAM, J.)**

I agree.

(HIRANMAY BHATTACHARYYA, J.)

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