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

ITA/91/2010
COMMISSIONER OF INCOME TAX, KOL-IV, KOLKATA
VS.
M/S. APARNA PROJECTS[P] LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : SEPTEMBER 23, 2022.

Appearance:
Mr. Tilak Mitra, Adv.
...for appellant
None appears
...for respondent

The Court :- This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated July 10, 2009 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata in ITA No. 363/Kol/2007 for the assessment year 2003-2004. The appeal was admitted on the following substantial questions of law :-

> "1. Whether on the facts and in circumstances of the case, the order of the learned Tribunal is an order made without due consideration of the evidence collected by the assessing officer and relying only on the unverified evidence produced by the assessee, thus giving rise to a question of law as held by the Hon'ble Supreme Court in CIT Punjab vs. Indian Woolen Textile Mills [51 ITR 291] ?"

We have heard Mr. Tilak Mitra, learned standing Counsel for the appellant. None appears for the respondent.

On going through the order passed by the learned Tribunal we find that the department fairly conceded that the certificate issued by Gujrat NRE Coke Limited was placed by the assessee regarding affirmation of purchase of Lam Cooking Coal on 28th August, 2022, 20th September, 2002 and 14th November, 2002. Further it was an admitted fact that all materials were available before them. Therefore, the learned Tribunal after having gone through the order passed by the Commissioner of Income Tax, Appeals [CIT(A)] held that [CIT(A)] has not accepted any additional evidence in violation of R.44A of the Income Tax Rules as contended by the revenue. Further, the learned Tribunal has considered the findings recorded by the [CIT(A)] and took note of the important fact that the revenue could not contradict the findings recorded based on the materials placed before the authority and accordingly affirmed the order passed by the [CIT(A)]. The [CIT(A)] has also noted that books of accounts have been audited by the chartered accountant and on the basis of the audited accounts the return of the income was prepared and accompanied by audited financial statement; the nature of business of the assessee was mentioned as manufacturing of low ash metallurgical coke and the quantitative details of raw materials and finished goods have been furnished in the notes of accounts. Further the [CIT(A)] noted the other certificates and receipts issued by the Pollution Control Board, the National Insurance Company; the State Electricity Board and the certificate of the electrical inspector as regards the existence of the factory, plant and machinery. Further the notice dated 26th July, 2002 issued by Gujarat NRE Coke Ltd. stating the particulars of the generator set sold to the assessee was also taken into consideration by the [CIT(A)] and direction was issued to the assessing officer to allow depreciation of the plant and machinery and generator set as provided under the rules. With regard to the disallowance of an amount of Rs.21,69,200/- being the bank charges [CIT(A)] noted that Gujarat N.R.E. Coke Ltd. was having a letter of credit facility with the

State Bank of India, Rajkot Branch and this letter of credit facility was utilised by assessee for the import of coke. The [CIT(A)] also took note of relevant debit note dated 20th January 2003. Further it is noted that the assessee has paid the amount of Rs.21,69,200/- to Gujarat N.R.E. Coke Ltd. and accordingly they deleted the addition. With regard to the addition of amount of Rs.5,69,337/- being the excess purchase, the [CIT(A)] took note of the auditor's report where the shortage was worked out from the quantitative details of finished goods. The [CIT(A)] noted the shortage is due to transit loss or due to moisture evaporation and the proportionate loss to the quantity manufactured also reduced to 0.278% which is very nominal and accordingly deleted the said addition.

Thus, we find there is no perversity in the approach of the [CIT(A)] while granting relief to the assessee which order was rightly affirmed by the learned Tribunal.

In the result, the appeal filed by the revenue fails and dismissed. The substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

Pkd/GH