

OD – 2

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

IA NO.GA/2/2017 (Old No. GA/1770/2017)
In
ITAT/200/2017

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL - 1,
KOLKATA
VS.
M/S. RUNGTA SONS PVT. LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : February 2, 2022.

[Via Video Conference]

Appearance :
Mr. Smarajit Roychowdhury, Adv.
... for the appellant

Mr. Subhas Agarwal, Adv.
..for the respondent

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 ('the Act' for brevity) is directed against the order dated 13th May, 2016 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (Tribunal) in ITA No. 1482/Kol/2011 for the assessment year 2007-08.

The revenue has raised the following substantial questions of law for consideration :

1. Whether on the facts and circumstances of the case, the Learned Income Tax Appellate Tribunal has erred in law in deleting the addition of Rs. 2,67,09,704/- out of Rs.4,68,02,738/- as unexplained cash credit under Section 68 of the Income Tax Act, 1961 erroneously relying on the decision of the Learned Commissioner of Income Tax (Appeals) and accepting the claim of the assessee ignoring the fact that a genuine party must not issue cheques through other non-existing parties for genuine transactions?
2. Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in interpreting section 68 of the Income Tax Act, 1961 by holding that Rs. 1,00,00,523/- credited to the account of M/s V.K. Minerals on 31.03.2007 did not represent cash credit as the said amount was credited on account of transfer entry, but, failed to appreciate that M/s V.K. Minerals is a non existing entity?

We have heard Mr. Smarajit Roychowdhury, learned standing counsel for the appellant/revenue and Mr. Subhas Agarwal, learned counsel for the respondent/assessee.

With regard to the first substantial question of law which has been suggested by the revenue, the discussion made by the Tribunal in the impugned order is in paragraph 7. The Tribunal sustained the order passed by the Commissioner of Income Tax (Appeal) by which a

limited relief was granted to the assessee, after noting the factual position, more particularly, the remand report submitted by the assessing officer wherein the assessing officer has accepted the factual position. Therefore, we find there is no question of law, much less substantial question of law, arising out for consideration as suggested in question no. 1.

With regard to the second question as suggested by the revenue, we find that the Tribunal has remanded the matter to the assessing officer to decide the same afresh. In fact, the assessee also agreed that the matter may be restored to the file of the assessing officer to decide the issue afresh. Thus, we find the second question also does not arise for consideration. Hence, the appeal fails and is dismissed with the observation that no substantial question of law arises for consideration.

The stay application also stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)