

OD-28

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

ITAT/158/2021
IA NO: GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX(CENTRAL)-2, KOLKATA
VERSUS
M/S. R.M. COMMERCIAL PVT. LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 9th February, 2022

Appearance :-

Mr. Debasish Chowdhury, Adv.

... For Appellant

Mr. J.P. Khaitan, Sr. Adv.

Ms. Swapna Das, Adv.

Mr. Siddhartha Das, Adv.

... For Respondent

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the order dated 6th December, 2019, passed by the Income Tax Appellate Tribunal, 'A' Bench, Kolkata in ITA Nos. 305 and 306/Kol/2018 for the assessment years 2012-13 and 2013-14. Revenue has raised the following substantial questions of law for both the assessment years.

Assesment Year 2012-13

- (a) Whether on the facts and circumstances of the case and in law, Learned Income Tax Appellate Tribunal has erred in deleting a sum of Rs.10,65,32,302/- representing alleged unsecured loan received by the assessee?
- (b) Whether on the facts and circumstances of the case and in law, Learned Income Tax Appellate Tribunal has erred in appreciating the fact that the assessee failed to file any details or documents with regard to receipt of alleged unsecured loan substantiating creditworthiness and genuineness of the transaction in assessment proceedings?
- (c) Whether on the facts and circumstances of the case and in law, Learned Income Tax Appellate Tribunal has erred in deleting the addition of sum of Rs.33,70,549/- u/s 14A read with rule 8D ignoring the essence of CBDT's Circular No.05/2014 dated 11.02.2014?

Assesment Year 2013-14

- (i) Whether on the facts and circumstances of the case and in law, Learned Income Tax Appellate Tribunal has erred in deleting a sum of Rs.1,42,95,699/- representing alleged unsecured loan received by the assessee?
- (ii) Whether on the facts and circumstances of the case and in law, Learned Income Tax Appellate Tribunal has erred

in appreciating the fact that the assessee failed to file any details or documents with regard to receipt of alleged unsecured loan substantiating creditworthiness and genuineness of the transaction in assessment proceedings?

- (iii) Whether on the facts and circumstances of the case and in law, Learned Income Tax Appellate Tribunal has erred in deleting the addition of sum of Rs.16,20,000/- u/s. 68 of the Income Tax Act, 1961 on account of sum received from sale of shares?
- (iv) Whether on the facts and circumstances of the case and in law, Learned Income Tax Appellate Tribunal has erred in deleting the addition of sum of Rs.95,65,382/- u/s. 14A read with rule 8D ignoring the essence of CBDT's Circular No.05/2014 dated 11.02.2014?

We have heard Mr. Debasish Chowdhury, learned Standing Counsel, appearing for the appellant/revenue and Mr. J.P. Khaitan, learned Senior Counsel, assisted by Ms. Swapna Das and Mr. Siddhartha Das, learned Counsel for the respondent/assessee.

Two issues fall for consideration in this appeal. Except for the amounts involved, the questions of law raised by the revenue in both the matters are identical. The first question is with regard to the addition made under Section 68 of the Act and whether the

Commissioner of Income Tax (Appeal) [CIT(A)] and the Tribunal were justified in deleting the said addition. The second question pertains to whether Section 14A read with Rule 8D could have been invoked by the Assessing Officer. On the second question, we find on facts that the assessee had made a specific claim that there was no exempt income earned by them during the relevant assessment years. This factual position was not controverted by the Assessing Officer and therefore the CIT(A) and the Tribunal granted relief to the assessee.

We find that there is no error in the finding rendered by the CIT(A) and the Tribunal as they had rightly taken note of the legal position. Hence, substantial questions of law “(c)” for the assessment year 2012-13 and “(iv)” for the assessment year 2013-14 are decided against the revenue. The next question would be with regard to the addition made under Section 68 of the Act. According to the Assessing Officer, creditworthiness of the lenders has not been proved. This aspect has been examined in an elaborate manner by the CIT(A). In fact, twice remand reports were called for from the Assessing Officer to examine the documents produced by the assessee. The CIT(A) has recorded that the Assessing Officer has not rendered any adverse comment on the documents which have been produced by the assessee. Further, the CIT(A) as well as the Tribunal re-examined the facts to ascertain as to whether the assessee had established the creditworthiness of the lenders and on facts findings have been recorded that the lender companies are income tax assesseees, they are

regularly filing income tax returns, the loans were advanced through account payee cheque, details of bank accounts and statements were available. Furthermore, the assessee was also able to demonstrate the source of money deposited into their bank accounts, which, in turn, has been used by them to lend it to the assessee as loan. Thus, the CIT(A) and the Tribunal, considering the facts of the case, held that the assessee has discharged its onus to prove the identity, creditworthiness and genuineness of the lender companies and, thereafter, the onus shifted on the Assessing Officer to disprove the documents furnished by the assessee, which was not done by the Assessing Officer despite the CIT(A) calling for remand report on two occasions. Thus, we find that the entire matter revolves on facts and there is no question of law, much less the substantial question of law, arising for consideration in this appeal on this issue.

Accordingly, the appeal is dismissed.

With the dismissal of the appeal, the application being GA/2/2021 is also dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)