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

ITAT/12/2023
IA NO: GA/1/2023
PRINCIPAL COMMISSIONER OF INCOME TAX 9 KOLKATA
VS.
SHRI TARUN CHAKRABORTY

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 2nd February, 2023

<u>Appearance</u> :
Mr. Om Narayan Rai, Adv.
Mr. Prithu Dudheria, Adv.
...for appellant
Ms. Sutapa Roychowdhury, Adv.
Mr. Saikat Ghosal, Adv.
...for respondent

The Court : - This appeal by the revenue has been filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated September 7, 2022 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata in ITA No.29/Kol/2021 for the assessment year 2016-2017.

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

(a) WHETHER on the facts and in the circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, Kolkata was right in not considering the fact that when credit of TDS has been claimed in ITR of Assessment Year 2016-2017, the corresponding receipt should also be assessed in the same year as per provisions of Rule 37BA(3) of the Income Tax Rule, 1962?

(b) WHETHER on the facts and in the circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, Kolkata was right in accepting the Assessee's submission that receipt of Rs.2,22,06,784/- was from earlier year and as such not assessable during the Assessment Year 2016-2017, in contravention to the provisions of Rule 37BA(3) of the Income Tax Rule, 1962, more so when the assessee was following mercantile system of accounting ?

(c) WHETHER on the facts and in the circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, Kolkata was right in not considering the fact that as per provisions of Section 145A(ii) of the Income Tax Act, Service Tax is an integral part of turnover and should be assessed as such ?

Heard learned Counsel for either side.

The revenue is on appeal before us challenging the correctness of the order passed by the learned Tribunal dated 7.9.2022, by which the appeal filed by the revenue challenging the order passed by the Commissioner of Income Tax, Appeals (7), Kolkata (CITA) dated 11.3.2020 was dismissed. The revenue filed the appeal before the learned Tribunal challenging the said order of the CITA dated 11.3.2020 contending that the CITA erred in deleting the addition of Rs.3,95,44,648/- made by the Assessing Officer without considering the findings recorded by the Assessing Officer. The assessee failed to offer any satisfactory evidence/document during the scrutiny proceedings to prove their claim and the CITA did not call for any remand report which is in contravention of Rule 46A of the Rules. The Assessing Officer during the assessment proceedings noted that there was a difference of business receipts to the assessee from M/s. Lafarge India Pvt. Ltd. as shown in 26AS as compared to the receipts shown by the assessee in P&L Account in respect of its proprietary concern M/s. Chakraborty Enterprise. The explanation was called for from the assessee who has stated that total amount received/receivable from the said company during the year was Rs.16,51,78,876/- out of which opening balance was Rs.2,22,06,784/- and the total amount received during the year was Rs.14,29,72,092/-. The Assessing Officer held that though the total receipts from the company was Rs.16,51,78,876/-, the assessee had disclosed the gross receipts from the said company in the trading account for the year ending 31.3.2016 only to the extent of Rs.12,55,72,989/-. Thus the Assessing Officer came to the conclusion that the assessee had suppressed the gross receipts to the extent of Rs.3,96,05,887/-. Accordingly, the said amount was added to the total income of the assessee as undisclosed receipts. Before the CITA the assessee was asked to explain the amount receipt/receivable from the said company after all an explanation was offered. The CITA took note of the explanation and on facts has found that the assessee has reconciled the alleged difference and the only remaining difference was Rs.61,239/- only. Accordingly, the CITA sustained the addition to the said extent. When the matter was carried on appeal to the learned Tribunal the Tribunal reexamined the factual position and agreed with the finding recorded by the CITA that the assessee was able to reconcile the difference except to the extent of Rs.61,239/- which was added to the total income of the assessee as undisclosed receipt. Thus we find there is no questions of law, much less substantial questions of law arising for consideration in this appeal.

Accordingly, the appeal fails and dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.