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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITAT/77/2023
IA NO.GA/2/2023

PRINCIPAL COMMISSIONER OF
INCOME TAX, CENTRAL-2, KOLKATA

-Versus-

M/S. AASTHA VINCOM PVT. LTD.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE AJAY KUMAR GUPTA
Date : 21st June, 2023

<u>Appearance :</u>
Mr.Tilak Mitra, Adv.
for the appellant.

Mr.J.P. Khaitan, Sr. Adv.
Mr.Saumya Kejriwal, Adv.,
for the respondent.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (for brevity, the Act) is directed against an order dated 26th August, 2022 passed by the Income Tax Appellate Tribunal, B- Bench, Kolkata (the Tribunal) in ITA No.123/Kol/2015 for the assessment year 2008-09.

We have heard Mr. Tilak Mitra, learned standing counsel appearing for the appellant and Mr. J.P. Khaitan, learned senior counsel assisted by Mr. Saumya Kejriwal, learned advocate appearing for the respondent.

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

"WHETHER on the facts and circumstances of the case, the Learned Tribunal were justified in law in not restoring the action of the Assessing Officer in making addition u/s 68 of the Act on the account of share capital and share premium?"

The short issue which falls for consideration is whether the Tribunal was justified in deleting the addition made by the assessing officer under Section 68 of the Act by order dated 31st March, 2014 pursuant to the direction issued by the Deputy Commissioner of Income Tax under Section 263 of the Act.

After we have elaborately heard the learned advocates for the parties and carefully perused the order impugned in this appeal, we find that the Tribunal has conducted a thorough factual examination as to the correctness of the order passed in the second round that is after the direction was issued in the order passed under Section 263 of the Act dated 7th March, 2013. The Tribunal has noted that the first assessment which was completed was a proceeding under Section 147 of the Act and the assessing officer in terms of Explanation 3 of Section 147 has called for the details of copy of bank statement, details of investment, details of fresh share capital, details from income from other sources, copy of books of accounts, details of loans and advances and after all those were furnished by the assessee, the assessment was completed holding that the assessee has fully explained the transaction and has also discharged the onus cast upon him. The learned Tribunal after noting as to how the first assessing officer has proceeded, considered the correctness of the assessment order dated 31st March, 2014 passed in pursuance to the direction issued under

Section 263 of the Act. The Tribunal has noted that the second assessing officer failed to comply with the direction issued by the PCIT in its order dated 7th March, 2013 and merely by surmises and conjectures held that the assessment in the share capital, share premium was not genuine and that the assessee has not discharged the burden cast upon him. The Tribunal has noted that the finding recorded by the first assessing officer was based on facts and after conducting enquiry and after also examining the documents which were produced. In the absence of any adverse material in hands of the second assessing officer, the Tribunal held that the first assessing officer could not have disturbed.

Thus, considering the manner in which the Tribunal has examined the issue, we find that a thorough factual examination has been done and, therefore, we find that there is no question of law much less substantial question of law is arising for consideration in this appeal.

Accordingly, the appeal fails and is dismissed. Consequently, the application [GA/2/2023] stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(AJAY KUMAR GUPTA, J.)

S.Das/