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

ITAT/88/2023
IA NO. GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
-VS-
M/s. DIGITAL COMMOSALES LLP

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE AJAY KUMAR GUPTA
Date : 19th June, 2023

Appearance :
Mr. Tilak Mitra, Adv.
...for the appellant.
Mr. J.P. Khaitan, Sr. Adv.
Mr. Pratyush Jhunjhunwala, Adv.
Mr. Saurabh Bagaria, Adv.
Mr. S. Rudra, Adv.
...for respondent

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961m (the Act) is directed against the order dated 23rd June, 2021 passed in ITA No. 313/Kol/2020 for the assessment year 2012-13. The revenue has raised the following substantial questions of law for consideration :

i) WHETHER the Learned Tribunal was justified in deleting the addition of Rs.20,00,00,000/- made by the Assessment Officer on account of share capital and premium in the course of assessment in absence of identity of the creditors, genuineness and creditworthiness of the entire transaction?

ii) WHETHER the Learned Tribunal was justified in deleting the addition of Rs.20,00,00,000/- made by the Assessment Officer where no personal attendance was made by any Director of the share allottee companies during the course of assessment proceedings and as such identity and creditworthiness of the creditors and genuineness of transaction could not be verified ?

iii) WHETHER the Learned Tribunal has erred in considering the facts, that the assessee company discharged its onus as is envisaged under section 68 of the Act?

We have heard Mr. Tilak Mitra, learned standing Counsel for appellant and Mr. J.P. Khaitan, learned Senior Counsel duly assisted by Mr. Pratyush Jhunjhunwala, learned Advocate appearing for the respondent/assessee.

The question which falls for consideration is whether the addition made by the assessing officer under Section 68 was in accordance with law and whether the Commissioner of Income Tax, Appeals 4, Kolkata CIT(A) was justified in allowing the appeal by his order dated 13.12.2019. At the first blush on perusal of the order passed by the learned Advocate we find that the order is a well reasoned order taking into consideration of the issue and then rendering the findings as the order runs to 25 pages. However, on a closer examination of the order we find that the discussion of the case begins from paragraph 6.5 of the order wherein the Court after noting the issue to be decided has referred to the decision of the Co-ordinate Bench of the Tribunal in the case of *ITO vs.M/s. Goodpoint Commodeal Pvt. Ltd.* in ITA No.

1204/Kol/2015 for assessment year 2012-13 dated 7.6.2019. We find that the entire order passed in the said decision has been extracted in full and in the last paragraph, i.e. in paragraph 6.7 the learned Tribunal said that applying the proposition of law laid down in the case law to the facts of the case, the Tribunal is satisfied that the order of the CIT(A) has to be upheld and accordingly, the appeal filed by the revenue was dismissed. Prima facie we are of the view that the order is a non speaking order. Mr. J.P. Khaitan, learned Senior Advocate, appearing for the respondent/assessee submitted that the CIT(A) while considering the appeal took note of all the facts and also the assessment orders of the six companies and has extracted some of the assessment orders and the CIT(A) has given elaborate reasons for allowing the appeal which order has been affirmed by the Tribunal. It may be true that the order passed by the CIT(A) is an elaborate order as it could be seen that it runs to 102 pages. Nevertheless, the Tribunal being the last fact finding authority in hierarchy of authorities, it is required that the Tribunal as to record reasons for affirming the order passed by the CIT(A), since the facts have to be gone into to justify the findings of the CIT(A). In the absence of any such finding and also in the absence of any clear discussion as to how the proposition of law which were referred to in the order passed by the Co-ordinate Bench of the Tribunal in the case of "*M/s. Goodpoint Commodeal Pvt. Ltd.*" is applicable to the facts and circumstances of the case has to be recorded by the Tribunal so as to be qualified to be a reasoned order. Thus, we are satisfied that the matter has to be reheard by the Learned Tribunal by considering the facts of the case and then coming to a conclusion as to whether the order passed by the CIT(A) is to be affirmed or not. For such purpose we are inclined to remand the matter back to the learned Tribunal for a fresh decision on merits in accordance with law, barring in mind the observations made above. In the light of the above discussion the appeal is allowed. The order passed by the learned Tribunal is set aside and the matter is remanded back to the learned Tribunal for a fresh decision on merits and in accordance with law.

Consequently, the substantial questions of law are left open.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(AJAY KUMAR GUPTA, J.)

pkd/GH.