OD – 3

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

ORIGINAL SIDE

ITAT/165/2023
IA NO.GA/1/2023
PRINCIPAL COMMISSIONER OF INCOME TAX – 2, KOLKATA

-Versus-

M/S. GEMINI COMMERCE PVT. LTD.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 14th August, 2023

Appearance :
Ms. Smita Das De, Adv.
Mr.Prithu Dudheria, Adv.
..for the appellant.

Mr.Abhratosh Majumdar, Sr. Adv.
Mr.Avra Mazumder, Adv.
Mr.Soumitra Choudhury, Adv.
Mr.Kausheyo Roy, Adv.
...for the respondent.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 15th March, 2023 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA No.14/Kol/2021 for the Assessment Year 2014-15.

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

"Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law to delete the additions made under Section 68 of the I.T. Act, 1961 in absence of any cogent and for reliable evidence towards establishing the identity and creditworthiness of the loan creditors and genuineness of the loan transactions despite the fact that the respective loan creditors were found to be non-existence Companies?"

We have heard Ms. Smita Das De, learned standing counsel assisted by Mr. Prithu Dudheria, learned counsel appearing for the appellant/revenue and Mr. Abhratosh Majumdar, learned senior counsel assisted by Mr. Avra Mazumder, learned counsel appearing for the respondent/assessee.

The assessing officer by an order dated 20th December, 2016 completed the assessment under Section 143(3) for the assessment year under consideration (A.Y.2014-15). The assessing officer after issuing the show cause notice to the assessee disallowed the substantial amount as an unexplained loan creditors of the assessee. The assessee filed appeal before the Commissioner of Income Tax (Appeals) - 4, Kolkata [CIT(A)]. Before the appellate authority the assessee appears to have filed paper book containing certain details and, therefore, the CIT(A) called for a remand report and accordingly the assessing officer submitted the remand report on 17th September, 2019. On a perusal of the report it is seen that in respect of each one of the year transaction with the eighteen companies the assessing officer came to the conclusion that the their creditworthiness has not been established and their identity also in certain cases has not been established. Thus, what was required by the CIT(A) to examine was the correctness of the information furnished by the assessee with reference to the remand report which has been called for. Though at the first blush the order passed by the CIT(A) appears to be an elaborate order and on a close scrutiny we find the same to be otherwise this is so because CIT(A) has extracted the entire judgment of this Court in ITA No.52 of 2001 in the *case of Commissioner of Income Tax, Central – I, Calcutta Vs. M/s. Nishan Indo Commerce Ltd. (Calcutta High Court)* and after extracting the entire decision, the finding rendered by the CIT(A) is only in the last paragraph stating that the assessee has discharged his onus by providing sufficient documentary evidence to the assessing officer. We find that there is absolutely no discrepancy on the documents which were placed by the assessee as well as the opinion rendered by the assessing officer in his remand report. When the matter was carried out by the revenue to the Tribunal, the Tribunal also appears to have committed the same mistake or rather swayed by the volume of documents placed before it in the form of a paper book. The Tribunal would state that the Tribunal has extracted the index portion of the paper book and has come to the conclusion that the CIT(A) was justified in setting aside the disallowance.

Unfortunately, the CIT(A) did not examine the merits of the mater and all that it was to extract the decision of this Court in the case of *M/s. Nishan Indo Commerce Ltd. (supra)* and in the last paragraph made a cryptic finding that the Tribunal has discharged his onus by providing sufficient documentary evidence to the assessing officer. Thus, in the absence of examination of facts either by the CIT(A) or by the Tribunal, we need to brand both the orders, that is, the order passed by the CIT(A) as well as the Tribunal as being perverse and thereby required to be set aside.

Accordingly, the appeal is allowed. The order passed by the Tribunal and the order passed by the CIT(A) dated 21st September, 2020 are set aside and the matter is remanded to the CIT(A) for fresh consideration. The CIT(A) shall afford an opportunity to the assessee as well as the department to examine the documents which have been filed by the assessee and also take note of the findings rendered by the assessing officer in his remand report dated 17th September, 2018 and thereafter, pass a speaking order on merits and in accordance with law. Consequently, the substantial question of law is left open.

With the above directions and observations, the appeal stands disposed of. The connected application [GA/1/2023] stands closed.

We make it clear that the merits of the matter has not been gone into and it is for the CIT(A) to examine the same thoroughly.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das/