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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/175/2023
IA NO: GA/1/2023
PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA
VS
PANCHDEEP CONSTRUCTION LTD.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 28th August, 2023

<u>*Appearance*</u> :
Mr. Prithu Dudhoria, Adv.
...for appellant
Mr. Avra Mazumdar, Adv.
Mr. Samrat Das, Adv.
Mr. Suman Bhowmick, Adv.
....for 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 4th June, 2023, passed by the Income Tax Appellate tribunal "A" Bench, Kolkata (the Tribunal) in ITA/557/2020 for the assessment year 2017-18. 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 holding that burden of proving creditworthiness under Section 68 is discharged by the Assessee even after multiple instances of irrational nature of financial affairs of the loan creditors and their sources had been identified by the Assessing Officer and duly recorded in the Assessment Order ?"

We have heard Mr. Prithu Dudhoria, learned standing Counsel for the appellant/revenue and Mr. Avra Mazumder, learned Advocate appearing for the respondent/assessee.

During the assessment proceeding the assessee was called upon to furnish the details of unsecured loans raised during the year under consideration (A.Y. 2017-18) with regard to five companies. The assessee submitted details as called for and the Assessing Officer discussed the matter with the assessee on several dates and completed the assessment by order dated 30.12.2019, holding that the unsecured loan was raised by way of accommodation entry through brokers and entry operators. The Assessing Officer added the sum under Section 68 of the Act and treated the same as unexplained expenditure under Section 69C of the Act and added the sum to the total income of the assessee.

Aggrieved by such order, the assessee filed the appeal before the Commissioner of Income Tax , Appeals (V), Calcutta, [CIT(A)]. Before the CIT[A] the assessee contended that the Assessing Officer sought for details of unsecured loans taken by the assessee from five companies and the details along with confirmation, ITR acknowledgement, balance sheet, source of funds, bank statement, MCA, Master Data etc. were filed. It was further contended that the Assessing Officer had issued notice under Section 133(6) of the Act to the parties and those parties complied with the direction and filed necessary documents.

Before the CIT[A] the assessee had filed voluminous documents to support their contention that the view taken by the Assessing Officer was erroneous. The CIT[A] after considering the submissions made by the assessee and in particular, the evidence which was submitted while replying to the notice under Section 133(6) of the Act and the supporting documents, found that the assessee had filed copies of the added accounts for the financial year 2016-17 of all five lender companies and the accounts revealed that the company was having substantial own funds in the form of capital and reserve which were several times more than the loan granted to the assessee. By way of illustration the case concerning *Konark Commercial Limited* was taken into consideration and the net worth of the company was Rs. 21.26 Crore as on 31.03.2017, whereas the loan to the assessee was 29.25 Lakhs with interest at 1.37 per cent. Similarly, the other companies' net worth was also discussed. Furthermore, the CIT[A] noted that though the Assessing Officer thought fit to issue notice under Section 133(6) of the Act to the loan creditors and creditors complied with the direction in notice, the Assessing Officer did not deem it proper to issue notice under Section 131 of the Act for personal appearance of the loan creditors. Further, the CIT[A] noted that assessing officer has not alleged non compliance of notice by any of them. Furthermore, the CIT[A] observed that there is no falsity of findings recorded by the Assessing Officer as regards any falsity or infirmity in the document which were placed before the Assessing Officer. After discussing the factual issue the Tribunal took note of various decisions of the Tribunal as well as of this Court and allowed the appeal filed by the assessee. The revenue filed appeal before the Tribunal. Once again before the learned Tribunal the assessee placed a paper book containing all the documents and furnishing details and explanation for the allegations made against the assessee as was done before the CIT[A].

The Learned Tribunal after taking note of the factual matrix affirmed the order passed by the CIT(A) holding that the findings are elaborate and reasons have been assigned by the CIT(A) to allow the appeal of the assessee.

Thus, we find that the entire matter, which has travelled upto the Tribunal and to this Court, are completely factual and we find no question of law, much less substantial questions of law, arising for consideration.

Accordingly, the appeal fails and is dismissed.

The stay application IA No: GA/1/2023 is also dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH/SN.