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

ITAT/202/2022
IA NO: GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX 5, KOLKATA
VS.
M/s. MANKASIA STEEL PVT. LTD.

BEFORE :
THE HON'BLE T.S. SIVAGNANAM ACTING CHIEF JUSTICE
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 3rd April, 2023

<u>Appearance</u> :
Mr. Tilak Mitra, Adv.
...for appellant.
Mr. Saurabh Bagaria, Adv.
Mr. Rites Goel, Adv.
...for respondent.

The Court : - This appeal filed by the revenue under Section 260A of the Income Tax Act (the Act) is directed against the order dated 12.6.2020 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata in ITA/482/KOL/2018 for the assessment year 2010-2011. The revenue has raised the following substantial questions of law :

a) *Whether on the facts and in the circumstances of the case the explanation offered by the assessee in respect of the expenditure for a sum of Rs.2,76,07,339/- was satisfactory as per under Section 69C of the said Act ?*
b) *Whether on the facts and in the circumstances of the case the Hon'ble Appellate Tribunal was justified in upholding the calculation made by the Commissioner of Income Tax (Appeals) in respect of addition being restricted to Rs.32,87,573/- ?*
c) *Whether on the facts and in the circumstances of the case Learned Income Tax Appellate Tribunal was justified in deleting the addition made by the assessing officer in respect of unexplained expenditure for a sum of Rs.2,65,30,653/- ?*

We have heard Mr. Tilak Mitra, learned standing counsel for the appellant and Mr. Saurabh Bagaria assisted by Mr. Rites Goel, learned Advocates for the respondent.

The dispute in the instant case lies in a narrow campus. The assessee as per his own admission had made undisclosed sales from undisclosed purchase. Thus, in the absence of any material on record, the CIT[A] had to estimate the undisclosed investment in the undisclosed sale. The following facts were taken note of by the CIT[A] and relief was granted to the assessee.

> "*Therefore, ld CIT(A) in the absence of any material on record, the entire undisclosed investment in undisclosed sales had been estimated. The ld CIT(A) noticed that assessee's undisclosed sales as detected during search and seizure operations carried out by the Officers of the Directorate General of Central Excise Intelligence amounts to Rs.2,76,07,339/- during the assessment year 2010-11. The average sales per month amounts to Rs23,00,611/-. The average GP on sales as disclosed in the returns is 3.90% which amounts to Rs.89,724/-. The average purchase per month amounts to Rs.22,10,887/-. The undisclosed investment was, therefore, estimated at Rs.22,10,887/- (Rs23,00,611/ - 89,724/-) on disclosed sales of Rs.2,76,07,339/-. The said ld CIT(A) also computed the profit on undisclosed sales of Rs.2,76,07,339/- at the rate of 3.90% at Rs.10,76,686/- [3.90% of Rs.2,76,07,339/-]. Therefore, addition was restricted to Rs32,87,573/- (Rs.22,10,887/- plus Rs10,76,686/-) instead of Rs.2,76,07,339/- as undisclosed income on undisclosed investment in sales and profit on undisclosed sales. The conclusions arrived at by the CIT(A) are, therefore, correct and admit no interference by us. We, approve and confirm the order of the CIT(A)".*

The learned tribunal tested the correctness of the order passed by the CIT[A] by re-examining the factual position and agreed with the view taken by the CIT[A]. We find that the CIT[A] had obtained the gross profit on undisclosed sale at 3.90% and, accordingly, the addition was restricted to the decision being arrived on examination and re-examination of the factual position. We find that no question of law, much less substantial question of law arises for consideration in this appeal.

Accordingly, the appeal fails and the same is dismissed.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE)

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH/As/S.Das