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

ITAT/234/2023
IA NO: GA/1/2023
DV RE-ROLLING MILLS PVT LTD.
VS
PRINCIPAL COMMISSIONER OF INCOME TAX 3, KOLKATA
...

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 10th October, 2023

Appearance :
Mr. J. P. Khaitan, Sr. Adv.,
Mr. Pratyush Jhunhunwala, Adv.
Mr. Samit Rudra, Adv
Ms. Sretapa Sinha, Adv.
...for appellants.
Mr. Prithu Dudheria, Adv.
...for respondent.

The Court : This appeal filed by the assessee under section 260A of the Income Tax Act, 1961 [the Act] is directed against the order dated 9.5.2022 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata in ITA No.573/Kol/2020 for the assessment year 2012-13. The assessee has raised the following questions of law for consideration.

A] Whether the findings and observations of the Tribunal that the appellant had not provided any documents or details before the lower authorities with respect to the identity and creditworthiness of the share subscribers and the genuineness of the transaction and/or not participated in the proceedings before the Commissioner of Income Tax [Appeals], perverse ?

B] Whether the appellant having provided the details of share subscribers, copies of their income tax returns and audited accounts and the bank statements and cheque details for the transactions and replies were also filed by the share subscribers to notices under section 133[6] of the Income Tax Act, 1961, the onus had shifted on the Assessing Officer to bring on record material and/or

evidence which should show that the transaction is not genuine or that the identity and creditworthiness of the share subscribers was doubtful ?

C] Whether the identity and creditworthiness of the share subscribers and genuineness of the transaction of share subscription be doubted only on the basis of non-appearance of the appellant's director to summons issued under section 131 of the Act when the appellant had duly provided all the necessary documents pertaining to the share subscribers including their PAN details, audited accounts and income tax returns and the share subscribers had also replied to enquiry made vide notice issued under section 133[6] of the Income Tax Act, 1961 ?

We have heard Mr. J. P. Khaitan, learned senior advocate appearing for the appellant and Mr. Prithu Dudheria, learned advocate for the revenue, who has requested to accept notice on behalf of the respondent department and his appearance shall be regularised by the department.

The tribunal by the impugned order dismissed the appeal filed by the assessee challenging the correctness of the order passed by the Commissioner of Income Tax [Appeals] – 3, Kolkata [CIT(A)] dated 16.9.2020. The appellant did not appear before the tribunal and the tribunal records that the assessee is not appearing despite notice being served through e-mail as well as telephonically. Accordingly, the tribunal proceeded to hear the representative of the department and dismissed the appeal. The learned tribunal is of the view that the assessee has not filed any evidence to prove identity and creditworthiness of the investors as well as genuineness of the transaction and there is no material before the tribunal so as to take contrary view. Therefore, the tribunal came to the conclusion that there is no reason to interfere with the order passed by the [CIT(A)]. The correctness of the order passed by the tribunal is challenged in this appeal. As could be seen from the assessment order dated 29.3.2015 under section 143[3] of the Act, notices were issued to the assessee under section 143[2] and 142[1] of the Act and the assessee appeared before the assessing officer from time to time and furnished

details and submissions and explanations. Subsequently, summons under section 131 of the Act was issued to the Director of the assessee for personal deposition and also producing the certain details. However, the Director failed to appear before the assessing officer. Therefore, the assessing officer proceeded to complete the assessment on the basis of the documents available and held that the assessee could not establish the creditworthiness of the shareholders as shown in the share capital investment during the relevant financial year and, accordingly, it was added back under section 68 of the Act.

Aggrieved by the same, the assessee preferred appeal before the [CIT(A)]. On perusal of the order dated 16.9.2020 passed by the [CIT(A)] we find that the assessee though did not appear in person they had filed written submissions electronically. This has been reproduced by the [CIT(A)] in paragraph 5.2 of its order. the [CIT(A)] also takes note of the various conditions which were raised by the assessee on facts. In paragraph 5.3, the [CIT(A)] records that he has gone through the submissions made by the assessee and perused the assessment order and relevant records. Further, the [CIT(A)] also perused the ITR of the share allottee companies and the balance-sheet of the share allottee companies, etc. Apart from that the [CIT(A)] has also perused the audited balance-sheet of the assessee company wherein they brought in the share capital including share premium for the assessment year 2012-13. Further, the [CIT(A)] examined the bank account of the assessee and recorded his opinion, apart from perusing the bank statement. Further, the [CIT(A)] records that the assessee had tried to make out a case that the identity, creditworthiness and genuineness of the transaction have been established on the ground that PAN, Income Tax Return, bank statement of the share allottee have been provided and, ultimately, while dismissing the appeal the [CIT(A)] recorded that he has considered the submissions of the assessee, the relevant assessment records, and the various judicial decisions and has come to a conclusion that the assessee has made out a case for interference of the order passed by the assessing officer. Further, it is seen that the [CIT(A)] had called for a remand report

and pursuant to which the assessing officer issued notice dated 2.8.2019 to the assessee calling for documentary evidence in the form of paper book. This was submitted by the assessee to the assessing officer as well as the [CIT(A)] on 23.8.2019. Thus, it is seen that [CIT(A)] had come to a conclusion upon considering the documents and the submissions made by the assessee. Therefore, it may not be correct to state that no evidences have been produced by the assessee to prove the identity and creditworthiness of the investors as well as the genuineness of the transaction. What was required to be considered was whether the documents produced by assessee and the stand taken by them to the identity and creditworthiness of the investors as well as the genuineness of the transaction on the materials which were on the file of [CIT(A)] as well as the assessing officer. The assessee has to be partly blamed for the present situation as the assessee failed to respond to the notice issued to the assessee through e-mail as well as electronically. In any event, since the appellant's remedy before the learned tribunal is a very valuable remedy as the learned tribunal is the last fact finding forum which will be able to appreciate and re-appreciate the facts, we are of the opinion that the appeal should be decided by the learned tribunal on merits.

For the above reasons, the appeal is allowed and the order passed by the learned tribunal is set aside and the matter stands remanded to the learned tribunal for fresh consideration of the appeal on merits and in accordance with law.

We make it clear that we have not gone into the merits of the matter and it is well open to the assessee to canvas all questions of fact and law before the learned tribunal. Consequently, the substantial questions of law are left open. The application, GA/1/2023 stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)