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

ITAT/223/2022
IA No: GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX -1, KOLKATA
VS.
M/S. MODERN MALLEABLES LTD. KOLKATA

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 1st February, 2023

Appearance :
Ms. Smita Das De, Adv.
....for appellant.

Mr. J.P. Khaitan, Sr. Adv.
Mr. Asim Choudhury, Adv.
Mr. Soham Sen, Adv.
...for the respondent.

The Court : This appeal by the Revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 20th March, 2020 passed by the Income Tax Appellate Tribunal, 'B' Bench, Kolkata (Tribunal) in ITA No.2548/Kol/2019 for the assessment year 2013-14. The revenue has raised the following substantial questions of law for consideration :

a) Whether on the facts and circumstances of the case the Learned Tribunal was justified in law in not allowing the Assessing Officer an opportunity to cross-examine the assessee when there was an admission of introduction of entry operators which was subsequently retracted without assigning any reason for such retraction whatsoever ?

b) Whether on the facts and circumstances of the case the Learned Tribunal was justified in not examining the creditworthiness of the subscriber of the share capital and also immediate source of funds ?

We have heard Ms. Smita Das De, learned standing counsel appearing for the appellant and Mr. J.P. Khaitan, learned senior counsel for the respondent/assessee.

The issue which falls for consideration in the instant case is whether the learned Tribunal is right in allowing the assessee's appeal by setting aside the order passed by the Commissioner of Income Tax (Appeals) affirming the order passed by the Assessing Officer. The order passed by the learned Tribunal is a very elaborate order and the discussion starts from paragraph 20 of the order. From the facts noted by the Tribunal, we find that the respondent/assessee was a public limited company established in the year 1956 but ran into rough weather and ultimately declared a sick industrial undertaking and reference was made before the Board for Industrial and Financial Reconstruction (BIFR). Subsequent developments which took place before the BIFR as to how the scheme was sanctioned etc., has been brought out in extenso by the learned Tribunal. That apart, the addition made in the instant case was based upon the statements recorded from two persons. The learned Tribunal has considered those statements and has pointed out that the assessee was not confronted with those statements nor any opportunity of cross-examination was afforded to the assessee.

The next aspect is with regard to a joint venture agreement with M/s. NCPL and in this regard the Assessing officer called for an explanation in respect of investment of Rs.17.46 Crore. The assessee has given certain explanation. The

Tribunal has taken note of the remand report which was called for from the Assessing Officer by the CIT(A) from which it was noted that the Assessing Officer did not find any fault with the joint venture agreement signed by the assessee with M/s. NCPL. The adverse note in the remand report with regard to payment of Rs.27,70,000/- paid to the Planning and Development authority, Silvasa for coversion of agricultural land for industrial purposes, after noting the facts the Tribunal found that the assessee had converted the land for utilisation of industrial purpose and for setting up the proposed manufacturing unit as per the joint venture agreement signed on 31st July, 2012 after obtaining requisite sanction and therefore, the Tribunal held that nothing turns out against the assessee on the said ground. That apart, the Tribunal also noted that the Assessing Officer has not independently examined Sri Anand Sharma and has not allowed the assessee to cross-examine the said person and therefore the statement given by the said person could not have been relied upon. Furthermore, the learned Tribunal also took note of the various documents which were filed by the assessee before the authorities and on facts found that the authorities could not controvert the veracity of those documents nor its genuinity and therefore held that an addition made in Section 68 based on two statements would not be sustainable in law.

The next aspect which the Tribunal took note of was the adverse view drawn by the Assessing Officer with regard to the audit report of the assessee stating that the said report does not mention anything about the joint venture. The Tribunal noted that the joint venture agreement was terminated by M/s. NCPL in February, 2013 itself and the assessee company had issued five cheques totalling a sum of Rs. 17.46 Crore on 31st March, 2013 to M/s. NCPL.

Therefore, the Tribunal held that the auditor has not reflected the same in his audit report prepared as on 31st March, 2012.

Thus, we find that the entire matter is factual and no question of law, much less substantial question of law, arises for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

The application for stay being IA No.GA/2/2022 is also dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/SN.