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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

ITAT 248 OF 2023
IA NO: GA/1/2023
PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
-Versus-
M/S. TARA RE-ROLLING PVT. LTD.

BEFORE:
The Hon'ble T.S. SIVAGNANAM, CHIEF JUSTICE
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 11th December, 2023

<u>*Appearance :*</u>
Mr. Aryak Dutta, Adv.
Mr. Prithu Dudhoria, Adv.
..for the appellant

Ms. Namrata Jha, 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 1st May, 2023 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (Tribunal) in I.T.A. No.49/Kol/2021 for the assessment year 2012-13.

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

i) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in deleting the addition of Rs.4,53,50,000/- under Section 68 of the Act, 1961 relying upon only on the papers submission made by the Assessee, without considering the law points that when the credit in the particular account books is a fresh credit for which assessee failed to establish the identity, creditworthiness of share holders and the genuineness of the transaction ?

ii) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in dismissing the appeal of the revenue on addition in respect of the share capital and share premium under Section 68 of the Income Tax Act, 1961 even though the share subscribing company has only meagre income in the return of income filed ?

The short question which falls for consideration is whether the Assessing Officer was justified in holding that the entire amount received by the assessee on account of issue of shares along with the quantum of premium paid for issue of shares are to be treated as unexplained cash credit in the books of accounts of the assessee under Section 68 of the Act. The order of assessment briefly discusses the case of the assessee and the Assessing Officer was of the view that though notices were issued under Section 131 of the Act to the investors they did not personally appear. Consequently he drew an adverse inference and held against the assessee. The assessee carried the matter in appeal before the Commissioner of Appeals - 7, Kolkata [CIT(A)].

As could be seen from the order passed by the CIT(A) dated 2nd September, 2020, an elaborate factual exercise has been done by the CIT(A) bearing in mind that three issues which are required to be considered in a case involving Section 68 of the Act namely, identity of the share subscriber which requires to be proved by documentary evidence; the creditworthiness of the share subscribers and the genuineness of the transaction. The CIT(A) noted that all the 13 subscribers had responded to the notices issued by the Assessing Officer and submitted details regarding their investments as well as their net-worth and also the orders of assessment passed on each of them.

This aspect has been noted by the CIT(A) and clearly illustrated in a tabulated format. After going through the facts, the CIT(A) held that evidence has been sworn by the assessee as well as by the investors establishing the creditworthiness, source of funds as well as the genuineness of the transaction. Further, the CIT(A) found that though all the materials were available with the Assessing Officer during the course of scrutiny assessment, they were not considered and no finding has been recorded by the Assessing Officer while holding against the respondent/assessee.

The revenue carried the matter on appeal before the learned Tribunal which dismissed the appeal filed by the revenue after re-appreciating the factual position.

Thus, we are of the view that no questions of law, much less any substantial question of law, arises for consideration in this appeal.

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.)

SN.
AR(CR)