OD–29

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

ITAT/8/2024
IA No: GA/1/2024
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-1, KOLKATA
VS.
YUTHIKA COMMERCIAL PVT. LTD. [PAN : AAACY2332E]

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 19th February, 2024

Appearance :
Ms. Smita Das De, Adv.
Mr. Prithu Dudhoria, Adv.
...for appellant
Mr. Saurabh Bagaria, Adv.
Mr. Rites Goel, Adv.
...for respondent

The Court : This appeal filed by the Department under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated July 25, 2023 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (Tribunal) in ITA No. 565/Kol/2018, for the assessment years 2012-13.

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

a) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law, in setting aside the order of the CIT (Appeals) who confirmed the addition of Rs. 5,42,00,000/-

made under Section 68 of the Act in the assessment order passed under section 143(3) dated March 28, 2015, on the ground that the identity and creditworthiness of the share applicants as well as the genuineness of transactions were proved ?

b) Whether on the facts and in the circumstances of the case the order of the Learned Income Tax Appellate Tribunal was justified in law to delete the addition of Rs.5,42,00,000/- without considering the merits of the case thereby giving rise to perversity ?

c) Whether on the facts and in the circumstances of the case the order of the Learned Income Tax Appellate Tribunal was justified in law to set aside the order of the CIT(A) appeals confirming the assessment order passed under section 143(3) of the Act without appreciating the ratio laid down in the case of PCIT vs NRA Iron & Steel Pvt. Ltd. [103 taxmann.com 48 (SC)] by Hon'ble Apex Court and also its own judgment in the case of ITO, Ward-5(3), Kolkata vs. M/s. Blessings Commercial Pvt. Ltd. in ITA No.271/Kol/2014 for AY 2010-2011 ?

We have heard Ms. Smita Das De, learned standing Counsel appearing for the appellant and Mr. Saurabh Bagaria, learned Counsel for the respondent.

Learned Tribunal had allowed the assessee's appeal thereby setting aside the order passed by the CIT (Appeals-2), Kolkata [CIT(A)] dated 23rd January, 2018, which affirmed the assessment order dated 28th March, 2015 passed under Section 143(3) of the Income Tax Act. The Tribunal has faulted the Assessing Officer in not having examined the materials placed by the assessee which, according to the learned Counsel for the respondent, was voluminous.

Furthermore, the Tribunal also faulted the Assessing Officer for not conducting an enquiry into the matter based on the documents produced by the assessee. Further, the Tribunal has held that CIT(A) has also not discussed about the correctness or otherwise of the documents and materials placed by the assessee before the Assessing Officer. In such circumstances, question would be as to what is to be done in the matter.

The learned Tribunal, being the last fact finding authority, was well within its jurisdiction while examining those documents to ascertain as to the correctness of the time taken by the assessee with regard to the genuineness of the transaction.

As to the identity and creditworthiness of the investors, the Tribunal could have called for a report from the Assessing Officer and upon receipt of such report, examine the same and record its satisfaction that the assessee has been able to prove the identity and the creditworthiness of the investors and the genuineness of the transaction.

However, the Tribunal has not done such exercise and merely proceeded to allow the appeal solely on the ground that the Assessing Officer did not consider the materials and documents produced by the assessee nor conduct any enquiry.

Thus we are of the view that the matter has to be examined by the Assessing Officer on merits and, therefore, we deem it proper to remand the matter back to the Assessing Officer for fresh consideration.

Accordingly, the appeal filed by the revenue is allowed and the order passed by the Tribunal is set aside as well as the order passed by the CIT(A) and the matter stands remanded to the Assessing Officer who shall rehear the matter in accordance with law after affording an opportunity of hearing to the authorised representative of the assessee. The Assessing Officer shall examine all the documents and the materials which are placed by the assessee and thereafter take a reasoned decision. The substantial questions of law raised by the assessee are left open.

The stay application stands disposed of.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

SN/tk
AR(CR)