OD–22

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

ITAT/28/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME
TAX CENTRAL 1 KOLKATA
VS
M/S EDMOND FINVEST PVT LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 26TH February, 2024.

<u>Appearance</u> :
Mr. Amit Sharma, Adv.
…for appellant
Mr. Pratyush Jhunjhunwala, Adv.
…for respondent

The Court :- Heard learned counsel on both sides.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 16th May, 2023 passed by the Income Tax Appellate Tribunal 'B' Bench, Kolkata in I.T.A. No. 96/Kol/2021 for the assessment year 2015-2016.

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

i) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in upholding the order of the Commissioner of Income Tax (Appeals) deleting the addition made under Section 68 of the Income Tax Act, 1961 on account of unexplained unsecured loan transactions and interest expense corresponding to such unexplained loan transactions by holding that the Assessing Officer did not make any independent inquiry whereas the Assessing Officer had made independent enquiry by issuing summons/notices ?

ii) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in upholding the order of the Commissioner of Income Tax (Appeals) deleting the disallowance made under Section 14A of the Income Tax Act, 1961 without considering that disallowance under Section 14A of the Income Tax Act, 1961 is not dependent on the amount of exempt income earned during the year?

iii) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in upholding the order of the Commissioner of Income Tax (Appeals) deleting the disallowance made under Section 14A of the Income Tax Act, 1961 without considering CBDT's Circular No. 5/2014 dated 11.02.2014 which provides for disallowance of expenditure even when taxpayer in a particular year has not earned any exempt income ?

There are two issues involved in the instant case. Firstly, whether the Commissioner of Income Tax, Appeals (CITA) was right in deleting the addition made under Section 68 o the Act, which order was affirmed by the Tribunal and whether the CITA was right in allowing the appeal filed by the assessee and directed the assessing officer to restrict the disallowance under Section 14A only by considering only the investments which have yielded tax free dividend income during the financial year under consideration. So far as the first is concerned namely, whether the addition under Section 68 was justified, we find that the learned Tribunal has elaborately considered the factual position and relevant paragraph of the findings rendered by the CITA have been quoted by the Tribunal. From the said findings it is clearly evident that the assessee has discharged its onus to establish the creditworthiness of the lenders can also the fact that the loans have been repaid and the loans from three creditors companies which were doubted was to the tune of Rs.1 crore and other transactions of the respondent assessee was not doubted by the department. Thus we find, that the factual issue has been thoroughly dealt with and in this appeal filed under Section 260A of the Act, we are not expected to respondent-appreciate the factual position. Thus we find no substantial questions of law arose on the said issue. The second issue is with regard to the disallowance under Section 14A. We find that the CITA rightly took note of the various decisions and held that the disallowance under Section 14A should be computed only to the reference to the investments which actually yielded additional income during the relevant year. In fact, this specific stand taken by the assessee during the assessment proceedings which was brushed aside by the assessing officer. Thus we find that the law on the subject has been rightly noted by the CITA which order has been affirmed by the learned Tribunal and we find there is no specific question arising for consideration on this issue as well.

For the above reasons, the appeal filed by the revenue is dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.