

OD-18

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

ITAT/36/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
VS.
ONE POINT COMMERCIAL PVT. LTD.

BEFORE :

THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 10th April, 2024

Appearance :

Mr. Tilak Mitra, Adv.
Mr. Prithu Dudhuria, Adv.
... for appellant

Ms. Sutapa Roy Chowdhury, Adv.
Mr. Narendra Kedia, Adv.
Ms. Aratrika Roy, Adv.
...for respondent

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated February 23, 2023 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata in ITA No.473/Kol/2019 for the assessment year 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 erred in law in deleting the addition of Rs.4,78,50,000/- under Section 68 of the Act on account of share capital and premium in the course of assessment in absence of identity of the creditors, genuineness and creditworthiness of the entire transaction ?
- b) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was erred in law in deleting the addition of Rs.4,78,50,000/- made by the Assessing Officer where no personal attendance was made by any director of the share allottee companies during the course of assessment proceedings and as such identity and creditworthiness of the creditors and genuineness of the transactions could not be verified ?
- c) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was erred in law in appreciating the principle which has been laid down by the Hon'ble Supreme Court in the case of Pr. CIT (Central) -1, Kolkata vs. NRA Iron & Steel Pvt. Ltd. (412 ITR 161) wherein it is suggested that Assessing Officer is duty bound to investigate the creditworthiness of the creditors/subscriber, verify the identity of the subscribers and ascertain whether the transaction is genuine or these are bogus entries of name lenders. In facts of the case, in spite of best efforts made by the Assessing Officer, he could not verify the same as there

was no response from the companies to whom shares were allotted during the course of assessment proceedings. Thus, the decisions of the Hon'ble ITAT is erroneous in holding that the raised share capital was not the assessee's own income.

We have heard Mr. Tilak Mitra, learned standing Counsel appearing with Mr. Prithu Dudhoria, learned Advocate for the appellant revenue and Ms. Sutapa Roy Chowdhury, learned Counsel appearing for the respondent.

The Assessing Officer while completing the assessment under Section 143(3) of the Act by order dated 24th March, 2015 held that the assessee has failed to prove anyone of the three ingredients which are required to be proved under Section 68 of the Act. Several decisions were referred to and the Assessing Officer concludes that there was no documents produced by the assessee to substantiate their claim. This order was affirmed by the Commissioner of Income Tax (Appeals)-9 [CIT(A)] by order dated 21st January, 2019 holding that merely furnishing documents in a routine way does not explain the source of creditworthiness of the party. Further, it has been held that the basis on which premium has been charged for the shares has not been explained; no efforts have been made with the help of financial statements to justify the quantum of share premium charged. The CIT(A) placed reliance on the decision of Kolkata Bench of the Tribunal in the case of M/s. Blessings Commercial Pvt. Ltd. in ITA 271/Kol/2014, dated 28th June, 2017 and other judgments and ultimately the appeal was dismissed. On an appeal preferred by the assessee before the

Tribunal, the concurrent findings recorded by the Assessing Officer and the CIT(A) have been set aside and the appeal has been allowed. The impugned order passed by the Tribunal runs to 14 pages and in paragraph 11 of the impugned order, the learned Tribunal has recorded that from the bare perusal of the paper book and the documents placed, it is revealed that all the share applicants are income tax assessees, they are filing their income tax returns, share application form and allotment letter is available on record which were filed in response to the notice under section 133(6), share application money was made by account payee cheques, details of the bank accounts belonging to the share applicants and their bank statements have been furnished and all the share applicants are having substantial creditworthiness represented by their capital and reserves. Though such is the findings recorded by the Tribunal, it is not supported by facts. The Assessing Officer has held that the assessee was a Private Limited company which cannot issue shares in the same manner in which Public Limited company does and in so far as creditworthiness of the share subscribers is concerned, there must be positive evidence to show the nature and source of resources of the share subscribers and if the assessee was serious enough to establish his case, it ought to have complied with the notices/letters issued by the Assessing Officer and ought to have produced the directors of the subscribing companies before the Assessing Officer so that they could explain the sources from which the share subscription was made. It is stated that there is no complaints either from the end of the assessee company or from the end of the alleged subscriber company. This finding recorded by the Assessing Officer

as affirmed by the CIT(A), if required to be set aside by the learned Tribunal, reasons have to be assigned. Therefore, we find that the conclusion arrived at by the learned Tribunal in paragraph 11 is insufficient to support its ultimate conclusion in allowing the assessee's appeal. Therefore, we are of the view that the matter has to be remanded back to the Tribunal for fresh consideration.

Accordingly, the appeal is allowed. The order passed by the learned Tribunal is set aside and the matter is remanded to the Tribunal to take a fresh decision on merits and in accordance with law and pass a reasoned order. Consequently, substantial questions of law are left open.

The stay application GA 2 of 2024 stands disposed of.

Considering the fact that the assessment is of the year 2012-13 and the assessment order was passed on 24.03.2015 under Section 143(3) of the Act, we request the learned Tribunal to give some precedence to the matter so that the appeal can be disposed of at the earliest.

When this appeal was heard earlier, since the learned Counsel for the respondent assessee took a stand that all documents were placed before the Assessing Officer, direction was issued to the learned Standing Counsel for the Department to call for the assessment file and opportunity was granted to the learned Counsel for the assessee to peruse the file and the learned Counsel upon perusal would submit that all documents which have been given by the assessee find place in the assessment file except for one document. The learned Tribunal shall grant liberty to the assessee to file a paper book containing all documents which they have stated to have submitted before the learned Tribunal and if any

further documents are to be submitted, leave of the Tribunal may be obtained and thereafter submitted.

(T.S. SIVAGNANAM, C.J.)

(HIRANMAY BHATTACHARYYA, J.)

SN.
AR(CR)