OD-11

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/63/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS
M/S ROOTSTAR DEVELOPERS PVT LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 15TH MARCH, 2024.

Appearance :
Mr. Om Narayan Rai, Adv.
Mr. Soumen Bhattacharjee, Adv.
..for appellant.

Ms. Swapna Das, Adv.
Mr. Siddharth Das, 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 6.2.2023 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata in ITA No. 33/Kol/2021 for the assessment year 2012-2013. The revenue has raised the following substantial questions of law for consideration :-

a) Whether the Learned Tribunal has committed substantial error in law in deleting the addition of Rs.10,11,00,000/- under section 68 of the Income Tax Act, 1961, while only relying upon paper submissions made by the assessee, without considering the aspect that every credit in a particular account book is a fresh credit for which assessee is required to establish the identity, creditworthiness of shareholders and the genuineness of transaction, which in the case at hand the assessee failed to do ?

b) Whether the Learned Tribunal has committed substantial error in law by not appreciating the fact that the share subscribing concerns have invested huge amount in the beginning year of their incorporation which defies the financial logic and sense ?

We have elaborately heard learned Counsel on either side.

The question is whether the addition made under Section 68 was justifiable. The Tribunal by the impugned order has dismissed the appeal filed by the revenue affirming the order passed by the Commissioner of Income Tax, Appeals - 7 dated 28.08.2020. We have gone though the order passed by the learned Tribunal and we find that the Tribunal has done a through factual exercise and examined as to whether three ingredients which are required to be satisfied for invoking Section 68 stood attracted, and on facts it held that these ingredients had not been fulfilled and, therefore, accepted the view taken by the CIT (A). The Tribunal has clearly recorded the findings that the assessee has been able to prove the identity, creditworthiness and genuineness of the transaction and has discharged the burden cast upon it.

Thus, we find there is no questions of law, much less substantial questions of law arising for consideration in this appeal.

Accordingly, the appeal fails and dismissed.

.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA,J.)

pkd/GH.