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

ITAT/68/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
VS.
M/S. SITKA MERCANTILE (P) LTD.

BEFORE :

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

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

Mr.J.P. Khaitan, Sr. Adv.
Mr.Pratyush Jhunjhunwala, Adv.
Ms.Sretapa Sinha, 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 10th November, 2022, passed by the Income Tax Appellate Tribunal, 'A' Bench, Kolkata (Tribunal) in ITA No.232/Kol/2021 for the assessment year 2009-10.

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.11,07,50,000/- under Section 68 of the Income Tax Act, 1961, relying upon only on the paper submissions made by the assessee, without considering the point of law that when any credit in the particular book of account is a fresh credit and the assessee is required to establish the identity, creditworthiness of shareholders and the genuineness of transaction, which the assessee failed to do?*
b) *Whether the Learned Tribunal has committed substantial error in law by not 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 has been held that the Assessing Officer is duty bound to investigate the creditworthiness of the creditor/subscriber, verify the identity of the subscribers and ascertain whether the transaction is genuine or these are bogus entries of name lenders?*
c) *Whether the Learned Tribunal has committed substantial error in law by failing to appreciate the ratio of decision of Apex Court in the case of Pr. CIT (Central-1), Kolkata vs NRA Iron & Steel Pvt. Ltd. (412 ITR 161) whereby it has been mandated that 'the assessee is under a legal obligation to prove the receipt of share capital/premium to the satisfaction of the A.O., failure of which, would justify addition of the said amount to the income of the assessee?*

d) *Whether the Learned Tribunal has committed substantial error in law in failing to appreciate that in the facts and under the circumstances of the instant case, the assessee company has failed to do so inasmuch as nothing has been furnished except submission of mere of various kinds?*
e) *Whether the Learned Tribunal has committed substantial error of law by holding that the raised share capital was not the assessee's own income?*

We have heard Mr. Om Narayan Rai, learned senior standing counsel assisted by Mr. Soumen Bhattacharjee, learned standing counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned senior advocate assisted by Mr. Pratyush Jhunjhunwala, learned counsel appearing for the respondent/assessee.

The revenue is aggrieved by the order passed by the learned Tribunal affirming the order passed by the Commissioner of Income Tax (Appeals) – 5, Kolkata [CIT(A)] dated 14th September, 2020 by which the addition made by the assessing officer stood deleted. The matter arises under Section 68 of the Act and the revenue is on appeal before us largely on the ground that the order passed by the Tribunal is not a speaking order and the factual position has not been discussed by the learned Tribunal. Further, it is contended that the shareholders were not produced before the assessing officer in spite of summons. Regarding the first aspect as to whether the order passed by the learned Tribunal is a speaking order or not, it is no doubt true that the learned Tribunal has verbatim extracted the finding recorded by the CIT(A). After which it has taken note of the submissions made on behalf of the revenue and the submissions made on behalf of the assessee and then took note of the documents which have been filed in the paper book (pages 58-705) which has been comprising share application and allotment of shares, bank statements, ITA acknowledgments, audited financial statements, explanation with regard to source of funds etc. and then took into consideration other evidences, namely, the name of the share applicants, their addresses, Pan Card numbers etc. The learned Tribunal has also noted that pursuant to the notice issued under Section 133(6) of the Act by the assessing officer, the share applicants have furnished the evidence called for by the assessing officer and established their identity, creditworthiness and the genuineness of the transaction. Further, the learned Tribunal noted that summons issued to the director by the assessing officer was complied with and he has given statement on oath by appearing in person before the assessing officer. If we turn back to the findings recorded by the CIT(A), we find that the matter was taken up by the PCIT under Section 263 of the Act and an order was passed on 10th March, 2014 holding that the reassessment order dated 30th September, 2011 was erroneous and prejudicial to the interest of the revenue for not making profit and sufficient enquiries into the share capital raised by the assessee during the relevant year. In the said order dated 10th March, 2014 the CIT(A) had set aside the assessment order and issued three specific directions. These directions were scrupulously taken into consideration and we find from the order passed by the CIT(A), the entire factual aspect has been discussed which have been noted by the assessing officer while completing the assessment. Thus, we find that the matter to be entirely factual and no substantial questions of law arise for consideration.

In the result, the appeal fails and the same is dismissed. The connected application stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das/mg.