OD-21

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

ITAT/74/2024
IA NO: GA/1/2024
M/S MOBILINK
VS
INCOME TAX OFFICER WARD-2(2) ASANSOL AND ANR

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 21ST JUNE, 2024.

Appearance :
Mr. Avra Majumder, Adv.
Mr. Brijesh Kumar Singh, Adv.
Mr. Om Prakash Prasad, Adv.
…for appellant.
Mr. Amit Sharma, Adv.
…for respondent.

The Court :- This appeal by the assessee filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated September 19, 2023 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata in ITA/41/KOL/2020 for the assessment year 2012-2013.

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

a. Whether the said impugned order dated September 19, 2023 passed by the Learned Tribunal is wrongful, illegal, arbitrary and bad in law?

b. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that your petitioner failed to explain the nature and source of loan transactions to the tune of Rs.1,01,65,000/- though your petitioner duly discharged the onus by filing various documentary evidences in connection with the aforesaid loan transactions ?

Heard learned counsel on either side.

The short question which falls for consideration is whether the assessee has proved their identity, genuineness of the transaction and creditworthiness of the persons with whom financial transactions were held by the assessee. The learned Tribunal affirmed the order passed by the Commissioner of Income Tax [Appeals] after examining the factual position and it found that the bank statements of both the cash creditors were submitted before the Assessing Officer. Apart from that one of the cash creditors had not filed return for the assessment year 2012-2013, the relevant year. In respect of the other cash creditors also, the learned Tribunal has examined the factual matrix and found that regular cash deposits have been made before issuing of cheques and noted that in the absence of any financial statement and other relevant details the alleged cash deposit in the bank account of the alleged cash creditors is doubtful. The learned Tribunal also took note of the decision of the Hon'ble Supreme Court in the case of Kale Khan Mohammed Hanif vs. CIT [1963] 50 ITR 1 [SC] in which it has been held that the onus of proving the source sum of money found to have been received by an assessee is on the assessee.

Thus, the Tribunal after re-appreciating the factual position held that the assessee had not proved the three ingredients which they were bound to prove.

Thus, we find no substantial question of law arises for consideration. Accordingly, the appeal stands dismissed. Consequently, application stands closed.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.