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

ITAT/87/2024
IA NO: GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX SILIGURI
VS
RAKESH SARAWGI

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : September 13, 2024.

*Appearance :*
*Mr. Om Narayan Rai, Adv.*
*Mr. Amit Sharma, Adv.*
*…for appellant.*
*Mr. Subhash Agarwal, Adv.*
*Mr. Rajarshi Chatterjee, Adv.*
*Mrs. Suman Sahani, 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 3rd April, 2023 passed by the Income Tax Appellate Tribunal, "A" Bench (the Tribunal) in ITA/1901/kol/2019 for the assessment year 2014-15. The revenue has raised the following substantial questions of law for consideration:-

1. Whether in the Learned Income Tax Appellate Tribunal has committed substantial error in law in upholding the order of the CIT(A) by ignoring the fact that the CIT(A) had passed the order without

granting opportunity to the Assessing Officer to investigate into and/or verify the evidences produced by the respondent assessee before the CIT(A) during appellate proceedings inspite of the Assessing Officer making request to provide opportunity to make further investigation on the points/explanations of the respondent assessee since the three requirements of identification of the lender, creditworthiness of the lender and genuineness of the transactions have to be tested in depth and not superficially ?

2. Whether the Learned Tribunal has substantially erred in law in not considering that the CIT(A) had committed error by admitting additional evidence and relying upon the same for deleting the addition made by the Assessing Officer in violation of the provisions contained under Rule 46A(3) OF the Income Tax Rules, 1962 as Remand Report was not called for by the CIT(A) in respect of Paper book-II submitted by the respondent assessee and the Assessing Officer was not given any opportunity to comment on the additional evidences produced by the respondent assessee?

We have heard learned Counsel on either side.

The revenue is on appeal being aggrieved by the order passed by the learned Tribunal rejecting the appeal filed by the revenue challenging the order passed by the Commissioner of Income Tax (Appeals), Siliguri [CIT (A)] dated 11 April 2019 before us. The only ground which was urged on behalf of the revenue is that the assessee did not participate in the assessment proceedings and, therefore, the assessing officer completed the assessment under Section 144 of the Act by order dated 27 December,

2016. When the appeal was filed the assessee produced certain documents before the Appellate Authority and the remand report was called for. However, after the remand report fresh set of documents were filed before the [CIT (A)], which were not sent for verification to the assessing officer and [CIT (A)] proceeded to rely upon those documents and granted relief to the assessee. In order to examine the correctness of the said submission, we have perused the order passed by the [CIT (A)], more particularly in paragraph 5.2.1. From the said paragraph it is evident that the Assessing Officer had requested the assessee to furnish the copies of the personal balance sheet for the assessment years 2013-14 and 2014-15 and in response to the same those were furnished by the assessee and those documents were filed in the form of a paper book no. 2. Further the personal balance sheet as on 31 March 2013 and the personal balance sheet as on 31 March 2014 also formed part of the said paper book and those were all placed before the assessing officer during the remand proceedings. Therefore, the revenue is factually incorrect to contend that the [CIT (A)] relied upon the documents which were never produced before the Assessing Officer. Furthermore, the Tribunal after entertaining and analyzing the facts of the case pointed out by the revenue as to which of the findings given by the [CIT (A)] was not factually correct or which documents furnished by the assessee were not believable.

Thus, we find no question of law much less substantial question of law arose for consideration.

Accordingly, the appeal fails and dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH