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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]
ORIGINAL SIDE

ITAT/99/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX
1 KOLKATA
VS
M/S MERRIT FINTRADE PVT LTD

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 14th August, 2024

Appearance :
Ms. Smita Das De, Adv.
Mr. Amit Sharma, Adv.
…for the appellant.

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 31st July, 2023 passed by the Income Tax Appellate Tribunal, C-Bench, Kolkata in ITA/800/Kol/2021 for the assessment year 2012-13.

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

"(i) Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal was justified in law to grant relief to the respondent assessee by upholding the order of the Commissioner of Income Tax (Appeals) pertaining to addition

of Rs.9,09,50,000/- on account of share capital/premium as unexplained cash credit under Section 68 of the Income Tax Act, 1961 ignoring the fact that the respondent assessee has failed to prove the identity, creditworthiness of the subscribers and genuineness of the transaction?

(ii) Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal was justified in law to grant relief to the respondent assessee by upholding the order of the Commissioner of Income Tax (Appeals) pertaining to addition of Rs.16,47,94,540/- on account of unsecured loan as undisclosed cash credit under Section 68 of the Income Tax Act, 1961 though the respondent assessee has failed to prove the identity, creditworthiness of the subscribers and genuineness of the transaction?"

We have heard Ms. Smita Das De, learned senior standing counsel along with Mr. Amit Sharma, learned counsel appearing for the appellant/revenue.

The revenue filed an appeal before the learned Tribunal challenging the order passed by the Commissioner of Income Tax - IV, Kolkata dated 5th October, 2018. This order came to be passed in an appeal filed by the assessee challenging the assessment order dated 18th March, 2014 under Section 143 of the Act thereby the assessing officer made an addition on account of share capital and security premium and also on account of unsecured loan. The appellate authority called for a remand report and considered the correctness of such report and has recorded a finding that the assessing officer failed to establish that the assessee has received any sum of money during the year. After referring to several decisions of the Hon'ble Court, the CIT(A) accepted the submission of the assessee that there was no cash involved in the issue of any share capital in the assessee's case as there was no sum credited in the books of accounts as per Section 68 of the Act. Not stopping with that, the CIT(A) then proceeded to examine the identity, capacity and genuineness of the transactions with regard to the share subscribers. We find from the order passed by the CIT(A) dated 5th October, 2018, a detailed examination has been made regarding the three aspects with regard to share subscribers and on considering the facts the CIT(A) observed that it is clear that the assessee has not received any share capital during the year and, therefore, the addition in the assessment year 2012-13 is not justified. The genuineness of the transaction was also examined by the CIT(A) and has recorded a finding that the assessee has been able to prove identity, the capacity of the loan creditors and genuinity of the transactions.

The revenue carried the matter on appeal before the learned Tribunal. On its part the learned Tribunal reappreciated the factual position and agreed with the finding recorded by the CIT(A) that the learned Tribunal also found that during the year under consideration the assessee received monies from two parties and another amount either opening balance or represented journal entries. The learned Tribunal also took note of the factual finding recorded by the CIT(A) with regard to the identity, creditworthiness of the lenders and genuineness of the transactions in so far as the two parties are concerned. It also noted that the two parties are group concerns and the turn-over was Rs.750.00 crores during the year and profit of Rs.27.13 crores. Thus, we find the matter is entirely factual and no question of law much less substantial question of law arises for consideration.

In the result, the appeal is dismissed and the connection application also stands dismissed.

(T.S. SIVAGNANAM)
Chief Justice

(HIRANMAY BHATTACHARYYA, J.)

S.Das/