OD-38

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

ITAT/110/2024
IA NO: GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX –9, KOLKATA
Vs
OINIDRI CHAKRABORTY

BEFORE:
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 3rd May, 2024.

Appearance:
Mr. Soumen Bhattacharjee, Adv.
...for the appellant

Mr. Pratyush Jhunjhunwala, Adv.
Ms. Sretapa Sinha, Adv.
...for the respondent

The Court: This appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against an order dated 22nd June, 2023 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata in I.T.A. No.192/Kol/2023 for the Assessment Year 2017-18.

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

A. *Whether the Learned Tribunal has committed substantial error in law by observing that the assessing officer was not right in making the Addition of Rs.4,19,56,697/- under Section 69A of the Income Tax Act, 1961 when the assessee failed to explain the source of cash deposits in* *the bank account in the assessment proceedings as also first appeal stage.*

B. *Whether the learned Tribunal has committed substantial error in law in admitting new evidences at the appellate stage in violation of rule 29 of Income Act (Appellate Tribunal Rules), 1963 whereas the Learned Tribunal did not provide opportunity to the Assessing Officer to rebut the fresh evidences produced by the Assessee.*

C. *Whether Learned Tribunal has committed substantial question of law thereby not following the mandatory provision regarding recording of reasons before admitting new evidences at the appellate stage.*

We have heard Mr. Soumen Bhattacharjee, learned counsel for the appellant and Mr. Pratyush Jhunjhunwala, learned counsel appearing for the respondent/assessee.

The Assessing Officer completed the assessment by an order dated 9th December, 2019 under Section 143(3) of the Act and held that there is unexplained money credited and accordingly applied Section 69A of the Act. Aggrieved by the same, the assessee filed an appeal before the National Faceless Appeal Centre (NFAC). The appeal was dismissed by an order dated 27th January, 2023 and the assessee preferred an appeal before the learned Tribunal. As could be seen from the order passed by the CIT(A), despite service of notice on three occasions and fixing time for online submission, the assessee did not utilise such opportunity and the CIT(A) proceeded with the matter and dismissed the appeal. Before the learned Tribunal, the assessee appears to have realised the mistake and they have submitted documents and details before the Tribunal to justify the cash deposits and to state that the finding recorded by the Assessing Officer is factually incorrect. The learned Tribunal appears to have made a fact-finding exercise but however the tribunal ought to have noted that it is for the first time the documents in the stated form have been produced by the assessee before the learned Tribunal. The learned Tribunal ought to have noted the conduct of the assessee in not participating in the appellate proceedings before the NFAC. It is true that the Tribunal being the last fact-finding authority in the hierarchy of authorities is entitled to appreciate and re-appreciate the documents. But, in the instance case, the correctness of the stand taken by the assessee and more particularly, the veracity of the confirmation issued by the Boral Union Co-operative Bank is required to be examined. It is no doubt true that the tribunal can, on the face of the document, examine its correctness but the CIT(A) would be entitled to direct the Assessing Officer to conduct an enquiry and submit a remand report. On the other hand, if the matter was before the Assessing Officer, the Assessing Officer is entitled to summon even third parties to produce the documents and details.

Therefore, we are of the view that considering the fact that the documents were placed before the Tribunal for the first time and the CIT(A) had no occasion to examine the correctness of the documents because of the non-participation of the assessee in the appeal proceedings, therefore, we are of the considered view that the matter should be remanded to the Appellate Authority for fresh consideration so that all the documents which the assessee may produce can be examined by the Appellate Authority and a fresh decision be taken on merits and in accordance with law.

In the light of the above, the appeal is allowed. The order passed by the learned Tribunal is set aside and the matter is remanded to the Appellate Authority for fresh consideration. The appellant is entitled to place all the documents and details before the Appellate Authority and the Appellate Authority shall cause appropriate verification and if need be, call for a remand report and thereafter proceed to take a fresh decision on merits and in accordance with law.

(T.S. SIVAGNANAM, CJ.)

(HIRANMAY BHATTACHARYYA, J.)

bp/R.Bhar