OD-13&14

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

ITAT/135/2024
IA NO : GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX(CENTRAL-2), KOLKATA
VS
M/S. ADHUNIK INFRASTRUCTURE LTD.

ITAT/137/2024
IA NO : GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX(CENTRAL-2), KOLKATA
VS
M/S. ADHUNIK INFRASTRUCTURE LTD.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 8th November, 2024

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

Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Avra Mazumder, Adv.
Ms. Alisha Das, Adv.
Mr. Suman Bhowmik, Adv.
Mr. Kausheyo Roy, Adv.
Mr. Samrat Das, Adv.
Ms. Elina Dey, Adv.
Mr. Parikshit Karmakar, Adv.
Ms. Megha Datta, Adv.
Mr. S.N. Banerjee, Adv.
...for respondents

The Court : These appeals filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) are directed against the order dated April

17, 2023 passed by the Income Tax Appellate Tribunal, Kolkata "A" Bench, Kolkata in I.T.(S.S.)A No. 42/Kol/2017 in I.T.(S.S.)A Nos.41, 42, 43 & 44/Kol/2017 for the assessment years 2009-10, 2010-11, 2011-12 and 2012-13 and in I.T.(S.S.)A No. 44/Kol/2017 in I.T.(S.S.)A Nos.41, 42, 43 & 44/Kol/2017 for the assessment years 2009-10, 2010-11, 2011-12 and 2012-13.

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

i) Whether the Learned Tribunal has committed substantial error in law by allowing deduction under Section 80IA to the assessee company, despite the fact that the assessee is ineligible to claim such deduction in light of the Memorandum to the Finance Act, 2007 ?

ii) Whether the order passed by the Learned Income Tax Appellate Tribunal is perverse inasmuch as the Tribunal has allowed the appeal of the assessee on the issue of payments made to STPL in lieu of labour contract, ignoring that the assessee has made payments for labour contract to parties other than STPL and that STPL has admitted providing bogus bills to the assessee ?

iii) Whether the Learned Income Tax Appellate Tribunal has substantially erred in law by dismissing the appeal of the revenue on the issue of bogus share capital despite the fact that the additions were made on the basis of incriminating documents in light of Section 132(4A) ?

We have heard Mr. Om Narayan Rai, learned standing counsel appearing for the appellant/revenue and Mr. Abhratosh Majumdar, learned senior advocate appearing for the respondent/assessee.

The first question which has been suggested by the revenue is with regard to the deduction allowed under Section 80IA of the Act. We find that the learned Tribunal has examined the factual position with regard to the eligibility of the assessee to claim deduction under Section 80IA and found that the assessee is a Private Limited company engaged in the business of civil contracts. Search and seizure again under Section 132 of the Act was conducted at Adhunik Group on 17th and 18th December, 2014. In compliance with the notices issued under Section 153A, the assessee filed the return declaring a total income of Rs.2,55,01,000/- after claiming dedudction under Section 80IA. The Assessing Officer came to the conclusion that the assessee is a works contractor and not a developer and therefore, not eligible for deduction under Section 80IA of the Act. The assessee challenged the order before the Commissioner of Income Tax (Appeals) [CIT(A)], who allowed the assessee's appeal which was challenged by the revenue before the Tribunal. The learned Tribunal after considering the findings rendered by the CIT(A), on its part examined the factual position and found that the assessee is engaged in civil contract business and meanwhile carries out projects carried by Public Works Department and claim under Section 80IA was made consistently and in the assessee's own case for the assessment year 2010-11, the issue was dealt with and the assessee was allowed to be eligible for the claim of deduction under

Section 80IA. Therefore, the revenue's appeal was dismissed. The finding rendered by the learned Tribunal cannot be faulted as the facts have been taken into consideration and no grounds have been made to interfere with the same.

The second substantial question of law suggested was with regard to the payment made to STPL in lieu of Labour Tribunal. This issue was considered by the Tribunal and after taking note of the facts found that for completing the company contracts, labour charges had to be paid and the Assessing Officer erroneously disallowed the labour charges paid to Sakshi Tradelinks Pvt. Ltd. to almost 80.77% of the total labour costs. The learned Tribunal after taking note of the facts approved the finding of the CIT(A) on this aspect.

We find no ground to interfere with the said finding rendered by the learned Tribunal.

The third issue is with regard to whether the Tribunal committed an error by dismissing the appeal of the revenue on the issue of bogus share capital despite the fact that the additions were made on the basis of the incriminating documents in the light of Section 132(4) of the Act.

We find this issue was elaborately considered by the learned Tribunal and the Tribunal found that the additions made by the Assessing Officer towards bogus share capital is not based on any incriminating material and other additions were also based on post search enquiry or other materials which were already disclosed by the assessee in its regular books of accounts and therefore, held the assessment to be bad in law. For coming to such conclusion, the learned Tribunal also took note of various decisions passed by this Court as well as the other High Courts and on facts it was found that in the instant case there was no mention of the name of the assessee company in the seized material and therefore the learned Tribunal came to the conclusion that the presumption of the Assessing Officer that the share capital received by the assessee from the share subscribing companies referred in the said seized material can be treated as bogus share capital is bad in law and not justified. The finding rendered by the learned Tribunal after considering the facts as well as taking note of the various legal precedents cannot be faulted.

For the above reasons, the appeals fail and are dismissed.

The substantial questions of law are answered against the revenue.

The stay applications also stand dismissed.

(T.S. SIVAGNANAM, CJ.)

(HIRANMAY BHATTACHARYYA, J.)

SN/S.Das
AR(CR)