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

ITAT/149/2023
IA No: GA/1/2024, GA/2/2024

SARITA RATHI
VS.
ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-37, KOLKATA

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 3rd May, 2024

Mr. Soumitra Chowdhury, Adv.
Mr. Avra Mazumder, Adv.
Mr. Kausheyo Roy, Adv.
Mr. Pranabesh Sarkar, Adv.
Mr. Suman Bhowmick, Adv.
...for appellant
Mr. Om Narayan Rai, Adv.
...for respondent

The Court : There is a delay of 11 days in filing this appeal by the assessee. The delay having been properly explained, the same is condoned. The application for condonation of delay is allowed.

This appeal by the assessee under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated November 1, 2023, passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (Tribunal) in ITA No.415/Kol/2023, for the assessment year 2016-17.

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

i) Whether the Ld. CIT(A) erred in making the purported additions without referring the submission on March 10, 2023 ?

ii) Whether the purported addition could be made on account of infructuous interest claim under Section 37 of the Act which is untoward, unlawful and liable to be deleted ?

iii) Whether the addition made by the Ld. CIT(A) should not have been made as the reply dated March 10, 2023 is not considered which was sought in the Notice dated February 23, 2023 under Section 250 of the Act and the last date of submissions may be furnished on or before March 10, 2023 ?

iv) Whether the Ld. Tribunal had heard the matter extensively and an order was passed in favour of the appellant on June 13, 2023 and as such, after such extensive hearing, the Ld. Tribunal ought not to have remanded the matter back to the Ld. CIT(A) to consider the evidences and explanations furnished by the appellant and thereafter to decide the issue afresh in accordance with law ?

We have heard Mr. Chowdhury, learned Counsel for the appellant and Mr. Rai, learned Counsel for the respondent.

The assessee was in appeal before the learned Tribunal challenging the correctness of the order passed by the National Faceless Appeal Centre (NFAC), Delhi dated 10th May, 2023. In the said appeal the assessee was partly successful and the Tribunal held that in respect of three transactions the assessee had established the genuineness of the same and accordingly, the addition made under Section 68 was deleted. In respect of transaction with four other parties, the Appellate authority came to the conclusion that the genuineness of the transaction and creditworthiness was not established by the assessee as the assessee has not produced the bank statements as required by the Assessing Officer. The assessee was in appeal before the learned Tribunal contending that the Appellate authority failed to appreciate that voluminous documents including bank statements of those four persons along with the others were not only placed before the Assessing Officer but also before the Appellate authority which was also placed before the learned Tribunal was not considered by the Appellate authority and the finding rendered by the Appellate authority that bank statements were not produced is factually incorrect. Further, the grievance of the appellant is that when documents were available before the Tribunal, the Tribunal was well within its jurisdiction to examine the same and if necessary, call for a remand report and could have decided the matter on merits instead of remanding the matter to the Appellate authority.

Learned Counsel for the appellant would submit that the appellant is an individual assessee and for a meager transaction the appellant is now being driven once again to the Appellate authority which will cause immense hardship to the assessee and the matter will be prolonged as it takes substantial time for the appropriate authority namely, NFAC, to decide such appeals.

Considering the peculiar facts and circumstances of the case and also taking note of the quantum involved, we are of the considered view that the learned Tribunal can decide the matter and if necessary, call for a remand report from the Assessing Officer in respect of those four persons from whom loan transactions are said to have been made by the assessee.

For the above reasons, the appeal is allowed and the impugned order is set aside and the matter stands remanded to the Tribunal for fresh consideration in respect of the four parties namely, Manoj Kumar Digga, Ritu Bagri, Shyamal Das and Suprya Enterprises. Prima facie we are of the view that the appellant has produced necessary documents namely, bank statements as well as income tax returns filed by those four persons. If the Tribunal is satisfied it can examine those documents and take a decision or on the other hand, if the Tribunal is of the opinion that a remand report is required to be called for from the Assessing Officer, the same can be done and the matter can be decided on merits and in accordance with law.

With the above observations, the matter stands remanded to the Tribunal for fresh consideration.

The appeal stands disposed of with the above terms and the substantial questions of law are left open.

The application for stay, IA No: GA/2/2024, is also disposed of.

(T.S. SIVAGNANAM, C.J.)

(HIRANMAY BHATTACHARYYA, J.)

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AR(CR)