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

ORIGINAL SIDE

ITAT/159/2024
IA NO: GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-2, KOLKATA
VS.
TANISHQUE TRADELINK PVT. LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 6th November, 2024

Appearance :
Ms. Smita Das De, Adv.
Mr. Prithu Dudhoria, Adv.
…for Appellant
Ms. Pooja Jewrajka, 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 16th March, 2023 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA No. 17/Kol/2021 for the assessment year 2008-09.

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

(i) Whether on the facts and circumstances of the case, the Hon'ble ITAT has erred in law in allowing the appeal of the assessee despite the fact that the assessee had failed to simultaneously establish, the identity of the buyer companies, their creditworthiness and the genuineness of transaction, which was obligatory under section 68 of the Income tax Act especially in view of the judgment of the Hon'ble Supreme Court in the case of NRA Iron & Steel Pvt. Ltd. (2020) 117 taxman.com 752 (SC) ?

(ii) Whether on the facts and circumstances of the case, the order of the Hon'ble ITAT is perverse on facts for the Hon'ble ITAT has ignored that the Ld. CIT(A) had decided the issue in favour of the assessee without considering the remand report submitted by the AO as per his direction ?

(iii) Whether on the facts and circumstances of the case, the order of the Hon'ble ITAT is perverse on facts for the Hon'ble ITAT has acknowledged the existence of the remand but failed to consider the content of the same, which was against the assessee and substantially indicating that the share capital raised by the assessee was bogus and rightly taxed as income under section 68 of the Act ?

We have heard Ms. Smita Das De, learned standing counsel appearing for the appellant/revenue and Ms. Pooja Jewrajka, learned counsel appearing for the respondent/assessee.

The revenue was unsuccessful before the Tribunal in its challenge to the order passed by the Commissioner of Income Tax (Appeals)-6, Kol. [CIT(A)] dated 24th September, 2020. The assessment was completed and thereafter reassessment proceedings were initiated and the same was completed. Subsequently the Commissioner of Income Tax thought fit to exercise his power under section 263 of the Act and the assessee participated in the said proceedings and ultimately the Assessing Officer decided against the assessee. The assessee preferred appeal against the said order before the CIT(A). The CIT(A) before recording any finding called for a remand report which was received from the Assessing Officer on 8.9.2017 and 17.1.2018. Thereafter, the CIT(A) has carefully examined the factual position and they have clearly recorded a finding that the Assessing Officer failed to carry out any of the directions issued by the Commissioner of Income Tax while exercising its power under section 263 of the Act. Apart from that the CIT(A) found that relevant information was provided by the assessee twice, one at the time of reassessment and second at the time of assessment proceedings pursuant to the order passed under section 263 of the Act.

We find the order passed by the CIT(A) to be a reasoned order and the relevant decision which would be applicable to the facts of the case have also been referred to and the Tribunal on its part also re-examined the factual position and found that the CIT(A) was fully justified in allowing the assessee's appeal. Furthermore, the Tribunal has recorded that though the assessee filed application, documentary evidence, the Assessing Officer failed to point out any specific error or defect in such documents.

Thus, we find that the matter is entirely factual and no substantial questions of law arise for consideration in this appeal.

The appeal is thus dismissed.

The stay application being GA/2/2024 is also dismissed.

(T.S. SIVAGNANAM, CJ.)

(HIRANMAY BHATTACHARYYA, J.)

SN./S.Das
AR(CR)