OD-12

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/170/2024
IA NO: GA/1/2024, GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS
ZULU MERCHANDISE PVT LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 28TH June, 2024.

Appearance :
Ms. Smita Das De, Adv.
Mr. Prithu Dudheria, Adv.
...for appellant

Mr. Agnibesh Sengupta, Adv.
Mr. Dwip Roy Basu, Adv.
Mr. Suphal Sanyal, Adv.
...for respondent.

The Court:- We have heard learned Advocates on either side.

There is a delay of 138 days in filing the appeal. As we are satisfied with the reasons given, the delay in filing the appeal is condoned. GA/1/2024 is allowed.

This appeal by the Income Tax Department filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated July 11, 2023 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata in ITA/380/KOL/2023 for the assessment year 2012-2013.

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

a. Whether on the facts and circumstances of the case, Hon'ble ITAT justified in law in deleting the addition of Rs.10,51,200/- on the issue of bogus loss on sale of shares, without considering the fact that the assessee failed to prove the identity of the alleged shareholders, their creditworthiness and also the genuineness of the whole transactions ?

b. Whether on the facts and circumstances of the case, Hon'ble ITAT justified in law in coming to the conclusion that the assessee had discharged the initial onus which lay upon him in terms of the IT Act, 1961 ?

The learned advocate for the respondent has raised a preliminary objection to the maintainability of this appeal on the question of law suggested by the revenue. It is seen that the respondent/assessee succeeded before the Tribunal on the question of limitation and this was the sole issue which was considered by the learned Tribunal. In such circumstances, the question of law suggested by the revenue in this appeal do not arise out of the order passed by the learned Tribunal. Therefore, we hold that the appeal cannot be entertained on the question of law as suggested by the revenue.

Hence, the appeal stands dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.