OD-19

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

ORIGINAL SIDE

ITAT/225/2024
IA NO: GA/1/2024
PRINCIPAL COMMISSIONER OF INCOME TAX-1 KOLKATA
VS
M/S BRIGHTSTAR VINCOM PVT. LTD.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK
Date : 4th October, 2024

Appearance :
Mr. Vipul Kundalia, Adv.
Mr. Prithu Dudhoria, Adv.
…for the appellant.

Mr. Avra Mazumder, Adv.
Ms. Alisha Das, Adv.
Mr. S. Bhowmick, Adv
Mr. Samrat Das, Adv.
Ms. Elina Dey, Adv.
Mr. S.N. Banerjee, Adv.
…for the respondent.

The Court : This appeal has been filed by the Income Tax Department under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated 21st February, 2024, passed by the Income Tax Appellate Tribunal, "B"

Bench, Kolkata (Tribunal) in ITA No. 176/Kol/2023, for the assessment year 2012-13.

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

a) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was not justified in law as well as in facts in deleting the addition of Rs.3,58,00,000/- made in the assessment order in the form of unexplained cash credit under Section 68 of the Income-tax Act, 1961 on account of Share Capital and Share Premium without giving the weightage to the unjustified payment of high premium to acquire share of seemingly un-prospective company and doubtful creditworthiness of share subscriber without considering the ratio laid down in the case of Principal Commissioner of Income Tax (Central)-1 Vs. NRA Iron & Steel (P) Ltd. reported in (2019) 103 taxmann.com 48/262 Taxman 74/412/ITR 161 (SC) and in the case of PCIT (Central-2), Kolkata vs. M/s. BST Infratech Ltd. in ITAT/67/2024 (IA No. GA/2/2024) dated 23.04.2024 ?

b) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was not justified in law as well as in facts in deleting the addition made in the assessment order without examining the creditworthiness of the capital introducer where the assessee failed to discharge its legal obligation to prove the source of fund of Rs.3,58,00,000/- which is claimed as Share Capital and Share Premium ?

c) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was not justified in law as well as in facts to delete the addition made by the Assessing officer without considering the fact that the source of such Share Capital and Share Premium was not properly explained by the assessee and it lacked any real profit-making business credence ?

We have heard Mr. Vipul Kundalia, learned standing counsel appearing for the appellant and Mr. Avra Majumder, learned counsel for the respondent.

As could be seen from paragraph 9 of the Memorandum of Appeal, the tax effect involved in this case is Rs.1,16,15,310/-. If that be so, the revenue cannot pursue the matter further on account of the circular issued by the Central Board of Direct Tax being Circular No.9 of 2024.

Accordingly, the appeal stands disposed of on the ground of low tax effect and the substantial questions of law suggested by the revenue are left open.

The stay application GA 1 of 2024 also stands disposed of.

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

(BIVAS PATTANAYAK, J.)

SN/S.Das
AR(CR)