OD-7

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

ITAT/206/2023
IA NO: GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 1 KOLKATA
VS
M/S. MAGNETIC NIRYAT PVT LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 22nd January, 2024

Appearance :
Mr. Prithu Dudhoria, Adv.
…for appellant

The Court:- Heard Learned Counsel appearing on behalf of the appellant.

This appeal filed by the revenue under section 260A of the Income Tax Act, 1961 is directed against the order dated December 23, 2022 passed by the Income Tax Appellate Tribunal B Bench, Kolkata [Tribunal] in ITA No.347/Kol/2022 for the assessment year 2012-13. The revenue has raised the following substantial questions of law for consideration :

[I] WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law, by deleting the addition made under Section 68 of the Act, 1961 without considering the fact that Assessee had failed to discharge his onus, of proving creditworthiness and identities of the creditors and genuineness of transactions with regard to Sundry Creditors during the previous year 2011-2012 relevant to the Assessment Year 2012-2013?

[II] WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law by upholding the order Commissioner of Income Tax [Appeals] (A) vide which he had submitted the addition of Sundry Creditors under Section 68 of the Act, 1961 as deemed income with the estimation of income @5% of turnover ?

[III] WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law by upholding the order of Commissioner of Income Tax [Appeals] (A) in restricting the addition of Rs.2,15,85,391/- without taking due cognizance to the fact that the identity of the assessee company and creditors could not be proved as the assessee did not appear during the appellate proceedings ?

Notice has been served on the respondent but none appears for the respondent. We have perused the order passed by the learned Tribunal by which the appeal filed by the revenue was dismissed. Before learned Tribunal, none appeared for the assessee. On perusal of the order passed by the Income Tax (Appeals) (CITA) dated 29.10.2021, we find that none appeared for the assessee and the CIT(A) partly allowed the appeal fixing the net income of the assessee company at 5% of the turnover and addition to the extent of Rs.2,15,85,391/- alone was confirmed. The learned Tribunal in paragraph 8 of the impugned order wherein the learned Tribunal found that there could be some certain specific instances point out as to how only the purchases are required to be added and that the CIT(A) has estimated the element of income in whole based on the details made in by the assessee. We find that the Tribunal has not elaborately given any reasons for rejecting the department's appeal, more so when none appeared for the assessee. The same is the position before the CIT(A) where none appeared for the assessee despite service of notice and it is also the case before us where in spite of service of notice none appears for the respondent/assessee. Considering the peculiar facts and circumstances of the case, we are of the view that the appeal has to be reheard by the CIT(A) after serving notice on the assessee.

For the above reasons, the appeal is allowed. The order passed by the learned Tribunal is set aside as well as the order passed by the CIT(A) dated 29.10.2011 is set aside and the matter stands remanded to the CIT(A) for fresh consideration of the matter on merits in accordance with law.

Consequently, the substantial questions of law are left open.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.