

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

ITAT/223/2023
IA NO.GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX 2, KOLKATA
VS.
RANKUP FOOTWEARE INDUSTRIES 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. Om Narayan Rai, Adv.
Mr. Soumen Bhattacharjee, Adv.
...for appellant
Mr. Soumitra Chowdhury, Adv.
Mr. Avra Mazumder, Adv.
Mr. Suman Bhowmik, Adv.
Mr. Kausheyo Roy, Adv.
Mr. Samrat Das, Adv.
...for respondent

The Court :- Heard Learned Counsel appearing on either side.

This intra-Court appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 16.03.2023 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata (the Tribunal) in ITA no. 427/Kol/2022 for the assessment year 2017-18. The revenue has raised the following substantial questions of law for consideration :-

- (i) Whether the Learned Tribunal has committed substantial error in law in deleting the addition of Rs.1,49,54,000/- made by the Assessing Officer on account of unexplained cash credit u/s 68 of

the IT Act, 1961 ignoring the fact that the assessee had recorded unaccounted income in the garb of unsubstantiated cash sales which had all ingredients of unexplained credit under section 68 of the Income Tax Act, 1961?

- (ii) Whether the Learned Tribunal has committed substantial error in law in deleting the addition of Rs.1,49,54,000/- by focussing only on the accounting aspect of the issue but not examining and taking due cognizance on the ingenuity and improbability of the transactions carried out under the garb of sales ?
- (iii) Whether the Learned Tribunal has committed substantial error in law in failing to appreciate that the assessee miserably failed to discharge its burden and ones to prove and establish the genuineness of the transactions and the source of the cash flow?

The assessee filed its return of income for the assessment year under consideration i.e. A.Y. 2017-18 on 18.01.2018 declaring a return of income of Rs.6,51,620/-. The assessee has engaged in the business of manufacturing and trading goods. The case was selected for scrutiny and the notice under Section 143(2) dated 9.8.2018 was issued and subsequently notice under Section 142(1) dated 5.8.2019 was issued and in response to such notice the assessee furnished certain papers and documents and explanation submitted electronically. Thereafter, show-cause notice was issued on 24.12.2019 stating that from the documents produced by the assessee seeking that yearly sales in the month of October 2016 was Rs.1,66,56,727/- which was made by cash and out of those sales the assessee had deposited Rs.,1,49,54,000/- in cash into

three bank accounts during the demonetisation period. Therefore, the assessing officer was of the prima facie view that the assessee received money from the undisclosed sources and they wanted to account for the said money by showing sales which were alleged to be not genuine. The assessee was directed to show-cause as to how the deposited money of Rs.1,49,54,000/- should not be treated as undisclosed and added back with the total income. The assessee was directed to upload the reply within 26.12.2019. The assessing officer while completing the assessment under Section 143(3) of the Act by the order dated 27.12.2019 recorded that no reply was uploaded by the assessee in response to the show-cause notice. Accordingly, the said amount was added back to the total income of the assessee. The assessee preferred appeal before the National Faceless Appeal Center. The Appellate Forum by order dated 27.06.2022 dismissed the appeal largely on the ground that the assessee claimed the sales nil during the month of October, 2016 i.e. the month preceding the demonetisation. The assessee's explanation that they manufacture special puja designs of Chappals and Shoes and sales were done during puja season in West Bengal was considered and the Appellate Forum concluded that the claim is unrealistic. Further, the Appellate Forum held that most of the receipts from cash sales i.e. Rs.1,49,54,000/- out of Rs.1,58,63,555/- effected in the month of October 2016 was still available for deposit in banks after demonetisation was announced. Further the Appellate Forum doubted as to how assessee was financing its alleged business operation without spending the alleged cash receipts. Further on examination of the bank statement of two of the bank accounts maintained in Bank of Baroda and SBI it was seen that the deposits of

demonetized cash were immediately followed by transfer to other bank accounts and most of the transfer of deposit cash were to Ashoka Hawai and Shoes Pvt. Ltd. Therefore, the claim of the assessee was held to be palpably wrong and the appeal stood dismissed. The assessee carried the matter on appeal to the learned Tribunal and upon impugned order the learned Tribunal allowed the appeal. It is submitted by the learned Advocate for the respondent/assessee was that voluminous paper book was filed before the Tribunal contending all records which were perused by the Tribunal and thereafter the appeal was allowed. On going through the impugned order we find that the discussion in paragraph 5 of the impugned order wherein the Tribunal holds that after considering the circumstances and documentary evidence furnished by the assessee and books of accounts of the assessee have not been rejected and the sales having been accepted the Tribunal did not find any justification on the part of the lower authorities in making the additions and accordingly, deleted those additions. In our considered view, since the learned Tribunal is the last authority which can appreciate and re-appreciate factual position the explanation offered by the assessee supported by document are required to be considered and the consideration should be reflected by way of certain observations and finding in the order to be passed. Since we find that no such specific finding has been recorded by the learned Tribunal, we are of the view that learned Tribunal should reconsider the matter in examining the voluminous records which have been filed by the assessee before learned Tribunal and thereafter examine the correctness of the findings recorded by the CITA more particularly the findings in paragraphs 4.3, 4.3.1.

For the above reasons, the appeal filed by the revenue is allowed and the order passed by the learned Tribunal is set aside and the matter is remanded to the learned Tribunal for fresh consideration in the light of the observations made above.

Consequently, the substantial questions of law are left open.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)