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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITAT/238/2023
IA NO.GA/1/2023

PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA
-Versus-

JOYDEB KUNDU

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

Appearance :
Mr.Amit Sharma, Adv.
..for the appellant.

Mr.Subash Agarwal, Adv.
Mr.Brijesh Kumar Singh, Adv.
...for the 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 May, 2023 passed by the Income Tax Appellate Tribunal, C-Bench, Kolkata (the Tribunal) in ITA No.8/Kol/2021 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 upholding order of the Commissioner of Income Tax (Appeals) – 15, Kolkata deleting the addition made by the Assessing Officer on account of unexplained cash deposit under Section 69A of the Income Tax Act, 1961 amounting to Rs.1,65,17,000/- as the assessee was unable to substantiate his claim and explain the complete and true picture of the cash deposited during the demonitisation period from 09.11.2016 to 31.12.2016 before the Assessing Officer at the time of scrutiny proceedings?*

(ii) Whether the Learned Tribunal has substantially erred in law by not considering that where any sum is credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or any the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income tax as the income of the assessee of that previous year?

We have heard Mr. Amit Sharma, learned standing counsel appearing for the appellant/revenue and Mr. Subash Agarwal, learned advocate assisted by Mr. Brijesh Kumar Singh, learned advocate for the respondent/assessee.

The appeal filed by the revenue before the learned Tribunal challenging the order passed by the Commissioner of Income Tax (Appeals) -15, Kolkata [CIT(A)] dated 23rd September, 2020 was dismissed. We have perused the order passed by the CIT(A) and we find that the case has been discussed in paragraph 5.4.6 of the order passed by the CIT(A) dated 23rd September, 2020 from which it is seen that the CIT(A) has examined the factual position and pointed out that all the details as called for by the assessing offer were uploaded on the portal by the assessee from time to time and the assessing officer had not pointed out the accounts produced/uploaded were incorrect or incomplete or that the method of accounting or accounting standards as notified have not been regularly followed. Furthermore, the CIT(A) on facts held that in the assessment order passed under Section 143(3) there is a tactic admission on the part of the assessing officer that the books were properly maintained. Therefore, the CIT(A) came to the conclusion that the rejection of the books of accounts was not sustainable in law. The other grounds which were urged before the CIT(A) were also considered and decided in favour of the assessee. The learned Tribunal re-examined the facts and agreed with the finding of the CIT(A). The Tribunal also relied upon a decision of a co-ordinate Bench in the case of ITO Vs. M/s. Senco Alankar in ITA No.10/Kol/2021 dated 27.06.2022 and dismissed the appeal filed by the revenue. Thus, we find that the matter revolves entirely on facts and no question of law much less substantial question of law arises for consideration in this appeal.

Accordingly, the appeal fails and is dismissed. The connected application stands closed.

(T.S. SIVAGNANAM)
(CHIEF JUSTICE)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/