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

ITAT/242/2023
IA No: GA/1/2023

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS.
M/S. HIRAK VYAPAAR PVT. LTD.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 3rd May, 2024

Mr. Om Narayan Rai, Adv.
Mr. Amit Sharma, Adv.
…for appellant
Mr. Abhratosh Majumder, Sr. Adv.
Mr. Pratyush Jhunjhunwalla, Adv.
Ms. Sretapa Sinha, Adv.
Mr. Kausheyo Roy, Adv.
…for respondent

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 13th April, 2023 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata in ITA No. 26/Kol/2019 for the assessment year 2008-09.

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

i) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in deleting the addition of Rs.10,60,50,000/- on account of share capital including premium without going into the facts and materials of the case ?

ii) Whether the Learned Income Tax Appellate Tribunal has substantially erred in law in ignoring the fact that when the assessee did not appear during hearing of the appeal before the Commissioner of Income Tax (Appeals) and did not pursue its own appeal then it became obvious that the respondent assessee did not have any clarification or explanation to offer regarding the said share capital and share premium alleged to be paid by the investors to the respondent ?

iii) Whether the Learned Tribunal has substantially erred in law in ignoring that the respondent assessee has failed to discharge its onus of proving the identity, genuineness and creditworthiness of the subscribing companies as well as genuineness of the share transactions ?

We have heard Mr. Om Narayan Rai, learned standing Counsel for the appellant and Mr. Abhratosh Majumder, learned senior Advocate for the respondent.

The assessment for the year under consideration was completed by the Assessing Officer under Section 143(3) of the Act. Subsequently, the Commissioner of Income Tax exercised power under Section 263 of the Act and passed an order on 30th March, 2013 setting aside the assessment order and directing the Assessing Officer to examine the genuineness of the transaction, directing examination of the directors of the company and other matters. Thereupon the Assessing Officer took up the matter for consideration and completed the assessment by order dated 31st March, 2014 holding that the share application money received by the assessee during the year has to be disallowed and added back to the total income of the assessee as unaccounted cash credit as per the provisions of Section 68 of the Act.

Aggrieved by the same, the assessee preferred appeal before the Commissioner of Income Tax (Appeals)-17, [CIT(A)]. Before the Appellate authority the assessee did not appear and the Appellate authority by order dated 20th March, 2017 dismissed the appeal. The assessee carried the matter in appeal to the learned Tribunal. Learned Tribunal, as we find from the impugned order, has done a thorough and elaborate examination of the facts. It also took note of the response filed to the notices issued under Section 133(6) of the Act. Thereafter it proceeded to examine the resource and surplus of the companies which had subscribed to the shares of the assessee company and found that all the share subscribers are regularly assessed to tax, they are filing Income tax

Returns; books of accounts were regularly maintained, financial statements were duly audited under the Income Tax Act and transactions have been carried out through banking channel and all the formalities required by the Registrar of Companies for the purpose of issuing share capital has been duly adhered and as on the date when the Tribunal considered the matter it found that all the share subscribers are active companies.

Thus, after taking into consideration the factual position, the Tribunal came to the conclusion that the assessee has successfully discharged the primary onus cast upon them to explain the investment.

Thus, we find that the Tribunal upon appreciation of the factual position has granted relief to the assessee and therefore, we hold that there is no question of law, much less substantial questions of law, arising for consideration.

The appeal is thus dismissed.

The stay application IA No: GA/1/2023 is also dismissed.

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

(HIRANMAY BHATTACHARYYA, J.)

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