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ITAT/253/2023
IA No.GA/2/2023

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX 1, KOLKATA
Vs
MAINAK SUPPLIERS PVT. LTD.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM

The Hon'ble JUSTICE SUPRATIM BHATTACHARYA

Date : 31st January, 2024

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

Mr. Avra Mazumder, Adv.
Mr. Samrat Das, 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 28th December, 2022 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA No.38/Kol/2021 for the assessment year 2009-10.

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 erred in law in granting relief to the

assessee and uphold the order of CIT(A) on account of addition of on undisclosed cash credit under Section 68 of the IT Act, 1961 of Rs.21,08,00,000/- without considering the fact that assessee has failed to prove the identity of the subscribers, genuineness of transaction and creditworthiness of the subscribers?

(b) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal erred in law in not considering the aspect of Section 68 of the Act and upheld the CIT(A)'s order by not considering the principle which has been laid down by the Hon'ble Supreme Court in the case of Pr. CIT, Central-1, Delhi Vs. NRA Iron & Steel Pvt. Ltd. 412 ITR 161(SC) which holds that if the enquiries and investigations revealed the identity of the creditors to be dubious or doubtful or lacking creditworthiness, then genuineness of the transaction would not be established, in such a case the assessee would not have discharged the primary onus contemplated under Section 68 of the Act. In the facts of the case the learned ITAT completely ignored such aspects. Thus learned ITAT has erred in giving relief to the assessee and unholding the order of CIT(A).

(c) Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal erred in law in upholding the order of CIT(A)'s without considering the fact that the source of share application money including the share premium were not properly explained by the assessee and it lacked any real profit making business credence?

We have heard Mr. Vipul Kundalia, learned senior standing counsel along with Mr. Prithu Dudhoria, learned standing counsel for the appellant and Mr. Avra Mazumder, learned standing counsel appearing for the respondent assessee.

We have carefully gone through the orders passed by the Commissioner of Income Act (Appeals)-7, Kolkata, CIT(A) dated 8th September, 2020. From the said order it is seen that the source of funds by all the share applicants has been examined by the CIT(A) and it has been pointed out that the assessing officer has not found any defect or deficiency in the source of funds explained by the share applicants through their replies to the statutory notices issued under Section 133(6) of the Act. Furthermore, on facts, it has been noted that every share applicant in their respective replies to the statutory notices issued under Section 133(6) of the Act has furnished copies of their income tax acknowledgements evidencing filing of income tax returns by each of them, copies of their audited accounts including balance-sheets wherein such investments made by each of them in the subscription of share capital issued by the assessee are duly reflected as also copies of their bank statements for the relevant period from which the subscription monies were paid by them respectively and copy of the allotment advice received by them from the assessee in respect of the shares allotted to them.

We find that the CIT(A) has made a thorough factual exercise and examined the matter and held that the genuinity of the transactions has been proved apart from the identity and the creditworthiness of the share applicants. The revenue carried the matter in appeal before the learned Tribunal and the learned Tribunal on its part once again did a factual verification and affirmed the order passed by the CIT. Thus, we find the matter is entirely factual which has been decided concurrently in favour of the assessee by the CIT(A) and the learned Tribunal and, therefore, we find that there is no question of law much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

Consequently, the application stands closed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

sg./bp