OD-21

ITAT/254/2023
IA No.GA/2/2023

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

PRINCIPAL COMMISSIONER OF INCOME TAX 2, KOLKATA
Vs
TRINETRA MERCHANTS (P) LTD.

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

The Hon'ble JUSTICE SUPRATIM BHATTACHARYA

Date : 31st January, 2024

Appearance:
Mr. Om Narayan Rai, Adv.
Mr. Soumen Bhattacharyya, Adv.
…for the appellant.

Mr. Abhratosh Majumder, Sr. Adv.
Mr. Avra Mazumder, Adv.
Mr. Samrat Das, Adv.
Mr. K. Roy, 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 3rd November, 2022 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA No.570/Kol/2021 for the assessment year 2012-13.

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

(a) *Whether the learned Tribunal has committed substantial error in law by deleting the addition of Rs.5.29 crore under Section 68 of the Income Tax Act, 1961, relying upon the paper submissions made by the assessee, without appreciating the fact that the credits were fresh credits in respect of which the assessee failed to establish the identity and creditworthiness of shareholders and the genuineness of transaction?*

(b) *Whether the learned Tribunal has committed substantial error in law by not appreciating the principle which has been laid down by the Hon'ble Supreme Court in the case of Pr. CIT (Central)-1, Kolkata vs. NRA Iron & Steel Pvt. Ltd. (412 ITR 161) wherein it has been held that the Assessing Officer is duty bound to investigate the creditworthiness of the creditor/subscriber, verify the identity of the subscribers and ascertain whether the transaction is genuine or is a bogus entry of a name lender?*

We have heard Mr. Om Narayan Rai, learned standing counsel along with Mr. Soumen Bhattacharyya, learned standing counsel for the appellant and Mr. Abhratosh Majumdar, learned senior standing counsel appearing for the respondent assessee.

The short question which falls for consideration is whether the learned Tribunal was right in deleting the addition made by the assessing officer under Section 68 of the Act. Initially, the appeal filed by the assessee before the Commissioner of Income Tax (Appeals) was dismissed for non-prosecution and subsequently orders passed by the learned Tribunal, the appeal was restored to the file of the CIT(A) to be heard and decided on merits. The CIT(A) has thereafter made a thorough and factual exercise and by an order dated 10th July, 2019 held in favour of the assessee. This order was put to challenge by the Revenue before the learned Tribunal and we find from the order passed by the learned Tribunal, more particularly, from paragraph 8 onwards, the learned Tribunal has thoroughly examined the factual issue and has held that the identity and creditworthiness of the share applicants and the genuineness of the transaction have been factually established and accordingly the appeal filed by the revenue was dismissed.

Thus, we find that the matter being entirely factual, no substantial question of law arises for consideration.

Accordingly, the appeal fails and is dismissed.

Consequently, the application stands closed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

sg./bp.