OD – 42

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

ORIGINAL SIDE

ITAT/271/2023
IA NO: GA/1/2023
PRINCIPAL COMMISSIONER OF INCOME TAX - 1, KOLKATA
VS
MANINYA COMFIN PVT.LTD.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 1st May, 2024

Appearance :
Mr. Tilak Mitra, Adv.
Mr. Prithu Dudheria, Adv.
...for the appellant.

Mr. Hemant Tiwari, 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 August, 2023 passed by the Income Tax Appellate Tribunal, Bench-B, Kolkata (the Tribunal) in ITA No.79/Kol/2021 for the assessment year 2012-13.

The revenue has raised the following substantial questions of law :

"(i) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was erred in law in deleting the addition made under Section 68 of the Income Tax Act, 1961 of Rs.7,96,16,343/- on account of unexplained credit in the form of share capital and share premium considering as cash credit without considering the fact that Section 68 of the Income Tax Act, 1961 clearly says "Where any sum is found credited in the books of an assessee maintained for any previous year" and there is no mention of cash credit in the section?

(ii) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was erred in law in deleting the additions made under Section 68 of the Income Tax Act, 1961 of Rs.6,85,77,614/- on account of explained unsecured loan without considering the fact that the credibility of the loan provider were not established?"

We have heard Mr. Tilak Mitra, learned senior standing counsel appearing for the appellant/revenue and Mr. Hemant Tiwari, learned counsel appearing for the respondent/assessee.

The short issue which falls for consideration is whether any substantial question of law arises for consideration in this appeal in case relating to addition made under Section 68 of the Act. The assessee was successful before the Commissioner of Income Tax [Appeal) [CIT(A)] and the revenue challenges the said order before the Tribunal. The Tribunal considered the correctness of the factual finding recorded by the CIT(A) and reappreciated the materials brought on record including the factual explanation offered by the assessee and granted relief to the assessee. Thus, we find that not only first the appellate authority but also the Tribunal has examined the facts in depth and recorded the finding. Thus, we do not find any question of law much less substantial question of law arises for consideration in this appeal.

In the result, the appeal is dismissed. Consequently, the connected application is also dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das
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