OD – 8

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

ORIGINAL SIDE

ITAT/68/2025
IA NO: GA/1/2025
GNG EXPORTS
VS
ASSISTANT COMMISSIONER OF INCOME TAX
CIRCLE 33, KOLKATA

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S SIVAGNANAM
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 6th May, 2025

<u>*Appearance :*</u>
Mr. Ramesh Kumar Patodia, Adv.
Ms. Megha Agarwal, Adv.
..for the appellant.

Mr. Prithu Dudhoria, Adv.
…for the respondent.

The Court : This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (in short, the Act) is directed against the order dated October 8, 2024 passed by the Income Tax Appellate Tribunal, C-Bench, Kolkata (in short, the Tribunal) in ITA/475/Kol/2024 for the assessment year 2013-14.

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

> "*(a) Whether the Learned Income Tax Appellate Tribunal erred in finding no infirmity in the action of the Ld.*

CIT(A) in confirming the estimated addition equal to 0.77 per cent of the total turnover of the appellant for the assessment year 2013-14 even when the Ld. CIT(A) as well as the learned Income Tax Appellate Tribunal rejected the action of the assessing officer in rejecting the books of accounts of the appellant on the basis of no response found from some of the sundry creditors in response to notice under section 133(6) of the Act?

(b) Whether the estimated addition equal to 0.77 per cent of the total turnover of the appellant for the assessment year 2013-14 can be sustained on the pretext that the same was offered by the appellant even though when the same was done under protest in view of erroneous rejection of books of accounts which rejected was held to be not tenable in law by the Ld. CIT(A) as well as the Learned Income Tax Appellate Tribunal?

(c) Whether the non-compliance to notices under section 133(6) of the Act by some of the sundry creditors can be a ground to make estimated addition equal to 0.77 per cent of the total turnover of the appellant for the assessment year 2013-14?"

We have heard Mr. Ramesh Kumar Patodia, learned advocate appearing for the appellant/assessee and Mr. Prithu Dudhoria, learned senior standing counsel appearing for the respondent/revenue.

The assessee preferred an appeal before the appellate authority, namely, National Faceless Appeal Centre (NFAC) challenging the assessment order passed under Section 143(3) of the Act dated 4.3.2016 by which the assessing officer rejected the books of accounts of the assessee and computed the income of the assessee by estimation method and fixed the same at 2% of the contracted work. It is not in dispute that during the course of assessment in reply to the notices issued under Section 133(6) the assessee referred to the net profit for three financial years, namely, 2011-12, 2010-11 and 2009-10 and computed the average at 0.77%. According to the assessee, this offer was made under protest before the assessing officer. The appellate authority considered the matter and held that the rejection of the books of accounts by the assessing officer on account of non-compliance of notices issued under Section 133(6) on some of the sundry creditors and subsequent determination of the income of the assessee at 2% of the contracted work is not tenable and, accordingly, deleted the same. Further, the appellate authority noted that the assesseee has in the alternative admitted before the assessing officer during the assessment proceedings of determination the net profit of the current year on the basis of the earlier three years average, which was computed at 0.77% of the total turn-over. This percentage was accepted by the appellate authority and, accordingly, the net profit for the assessment year under consideration was fixed at 0.77% of the total turn-over and the appeal stood partly allowed.

Being dissatisfied with the said order, the assessee preferred an appeal before the learned Tribunal which has been dismissed.

The learned advocate for the appellant/assessee reiterated the submissions made before the learned Tribunal and submitted that the average net profit for the three financial years was offered during the assessment proceedings under protest and that should not have been the basis of the appellate authority to fix the same. This submission does not merit consideration for several reasons more particularly when there can be no such offer made by the assessing officer under protest during the course of the assessment proceedings. The contents of the reply given by the assessee during the hearing on March 1, 2016 which has been extracted by the learned Tribunal clearly shows that the offer though stated to be under protest, the assessee has made a calculation by computing the average of the net profit for three financial years. Therefore, we are of the view that the appellate authority was right in accepting the said percentage as net profit for the assessment year under consideration and we also find that the learned Tribunal rightly affirmed the order passed by the appellate authority. Thus, we find no question of law much less substantial questions of law arising for consideration.

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

(T.S SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)

S.Das/
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