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

ITAT/203/2024
IA NO: GA/1/2024

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS.
TRUE MAN CONSULTANTS PVT. LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE: 25TH APRIL, 2025

Appearance:
Mr. Prithu Dudhoria, Adv.
...for Appellant
Mr. V. N. Dubey, Adv. (VC)
Mr. Arani Guha, Adv.
Mr. Tanay Ghosh, Adv.
...for Respondent

The Court : This appeal filed by the appellant/revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 23rd February, 2024 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata, in ITA No.1158/Kol/2023 for the assessment year 2012-13.

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

"(a) Whether on the facts and in the circumstances in the case, the Learned Income Tax Appellate Tribunal was justified in law in deleting the addition of Rs.6,52,00,000/- in the form of unexplained cash credit u/s.68 of the I.T. Act, 1961 and addition of Rs.1,02,350/- u/s. 14A of the I.T. Act, 1961 without giving due weightage to the unjustified payment of high premium to acquire shares of a seemingly unprospective company and doubtful creditworthiness of share subscriber without considering the ratio laid down in the case of Principal Commissioner of Income Tax (Central) – 1 Vs. NRA Iron & Steel (P) Ltd., reported in (2019) 103 taxmann.com 48/262 Taxman 74/412/TTA 161 (SC) and in the case of the PCIT (Central) 2, Kolkata Vs. M/s. BST Infratech Ltd. in ITAT/67/2024 (IA No. GA/2/2024) dated 23.04.2024 by the Jurisdictional High Court of Calcutta ?

(b) Whether on the facts and in the circumstances in the case, the Learned Income Tax Appellate Tribunal was justified in law in granting relief and deleted the addition made by the Assessing Officer without examining the creditworthiness of the capital introducer where the assessee failed to discharge its legal obligation to prove the source of fund of Rs.6,52,00,000/- which is claimed as fresh share capital ?

(c) Whether on the facts and in the circumstances in the case, the Learned Income Tax Appellate Tribunal was justified in law in deleting the addition made by the Assessing Officer without considering the fact that the source of such fresh investment was not properly explained by the assessee and it lacked any real profit-making business credence ?"

We have heard Mr. Prithu Dudhoria, learned standing Counsel appearing for the appellant/revenue and Mr. V. N. Dubey, learned Counsel appearing for the respondent/assessee.

The short issue which falls for consideration is whether the learned Tribunal was justified in allowing the assessee's appeal and setting aside the order passed by the Commissioner of Income Tax (Appeals) dated 13th July, 2023 by which the Appellate Authority affirmed the addition made under Section 68 of the Act in the assessment order dated 27th March, 2015. The law on the subject has been clearly laid down by the Hon'ble Supreme Court in various decisions that the assessee has to first establish three factors, namely, identity of the investors, their creditworthiness and genuineness of the transactions. If these three factors are prima facie established by the assessee, then the onus shifts on the department to prove otherwise.

Thus, we are required to consider as to whether the assessee had prima facie satisfied the three conditions and if so, whether the department was justified in making the addition under Section 68 of the Act.

On going through the order passed by the Tribunal, more particularly, the discussion which has been made from paragraph 8 of the impugned order, it is seen that the assessee has produced all details pertaining to the share applicants, namely, the Certificate of incorporation of the share applicants, their networth as per the audited balance sheet of the concerned share applicants and the various documents concerning the share applicants to establish their identities, creditworthiness and genuineness. At the first blush, it appears these documents were produced for the first time before the Tribunal and not before the Assessing Officer. However, on going through the order of assessment, we find that the Assessing Officer has acknowledged the receipt of all the details and documents which have been filed by the assessee pursuant to the notices which were issued by the Assessing Officer. However, curiously enough, the Assessing Officer not a single line stated that the documents filed and explanation received were not acceptable. No reason was forthcoming as to why the documents filed and the explanation received were not acceptable in the opinion of the Assessing Officer. Thus, the order of assessment is a non-speaking order.

So far as the factual issues are concerned, the learned Tribunal has elaborately taken note of the factual position, analyzed the documents which were produced before the Assessing Officer and also the gist of all the information which were provided by the assessee which for the sake of convenience was placed in a tabulated form.

Thus, we find upon perusal of the factual position the learned Tribunal has granted relief to the assessee and we find no questions of law, much less substantial questions of law, arising for consideration.

The appeal thus fails and is dismissed.

Consequently, the stay application, IA No: GA/1/2024, also stands dismissed.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

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