

OD-8

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

ITAT/219/2024
IA NO: GA/1/2024, GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX 1 KOLKATA
VS
RAINBOW VINCOM PVT LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : January 15, 2025.

Appearance :
Smita Das De, Adv.
Mr. Prithu Dudhoria, Adv.
..for appellant

The Court: - Notice has been served on the respondent. Affidavit of service has been filed but none appears for the respondent.

There is a delay of 111 days in filing the appeal. As the delay has been properly explained the same is condoned. The application is allowed.

This appeal has been filed by the revenue under Section 260 of the Income Tax Act, 1961 (the Act) is directed against the order dated 10.11.2023 passed by the Income Tax Appellate tribunal "B" Bench, Kolkata (the Tribunal) in ITA/456/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 circumstances of the case, the Learned ITAT was justified in law to delete the addition made u/s 68 of the Act of

Rs.2,06,00,000/- without considering the facts that the issue of the impugned addition of share premium is relating to organized tax evasion activities as per Para 3.1.h of CBDT's Circular no.5/2024 dated 15.03.2024 ?

b. Whether on the facts and circumstances of the case, the Learned ITAT was justified to delete the addition made in the assessment order in the form of unexplained cash credit u/s 68 of the Income-tax Act, 1961 of Rs.2,06,00,000/- [Share premium of Rs.1,84,50,000/- plus issued paid up shares of Rs.21,50,000/-] without giving due weightage to the unjustified payment of high premium to acquire share of doubtful creditworthiness of share subscriber companies ignoring 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/ITR 161 [SECURED CREDITOR] and in the case of PCIT [Central]-2, Kolkata vs. M/s. BST Infratech Ltd. in ITATG/67/2024[IA NO.GA/2/2024] dated 23.04.2024 ?

We have heard Ms. Smita Das De, learned Senior Counsel and Mr. Prithu Dudhuria, learned Counsel for the appellant.

The issue which falls for consideration is whether the assessing officer was justified in making the addition by invoking the power under Section 68 of the Act.

We have perused the order passed by the assessing officer dated 11.3.2015, from which it is seen summons were issued to the assessee under

Section 131(1) of the Act to produce certain documents and details. The assessing officer accepts the fact that the assessee submitted a response on 10.3.2015 providing "certain details". However, the director of the company did not appear in person and depose. Therefore, the assessing officer in a single line stated that the credit entries remained unexplained. Thereafter the assessing officer referred to Section 68 and a few decisions of the Hon'ble Supreme Court and this Court and has made the addition. The assessee carried the matter on appeal before the appellate authority namely the National Faceless Appeal Centre (NFAC). In the appeal factual grounds were raised as well as reliance was placed on various decisions of the Hon'ble Supreme Court and the High Court. Apart from that written submission were also made before the Appellate Authority. The assessee among other things pointed out that at the initial stage of the scrutiny assessment the assessee had furnished the copy of computation of total income, copy of audited accounts of the assessee company and also furnished all the income tax return and acknowledgement of submission of returns. Subsequently, they furnished bank statement of two bank statements where the said sum/proceeds were credited.

Thus, the assessee contended that the total receipts were properly reflected in the bank note. Apart from that the assessee also produced bank statement of the investor companies and also record to show that during the year an investigation was made in Assam Entrade Limited and Form No. 5 required for issue of shares were also furnished before the assessing officer. As could be seen from the assessment order dated 11.3.2015 though the

assessing officer accepts that the assessee has produced details there is no finding to the effect that the transaction was not genuine or creditworthiness of the investors has not been established and that the identity of the creditors have also not been proved. Apart from that before the appellate authority copy of the annual return along with Form 20B along with ROC receipts for the assessment year 2012-13 of the assessee company was produced to substantiate the genuineness of the shares allotted to M/s. Primerose Traders Private Limited. The identity of the share applicants was disclosed stating that it is a body corporate and duly incorporated under the Companies Act, 1956 and also the share applicant is identifiable from its PAN allotted by the Income Tax Department. Furthermore, the share subscribers were having identity with the Registrar of Companies and is also available in the given address for verification. Thus, the assessee submitted this document to prove the identity of the creditors apart from their capacity to advance share application money. Unfortunately, the appellate authority did not disclose any of these documents nor thought it fit to call for a remand report from the assessing officer but in a single paragraph has rejected the appeal. When the matter travelled up to the Tribunal this aspect was taken note by the Tribunal and the Tribunal has recorded a finding that the assessing officer has not pointed out any discrepancy or insufficiency in the findings and details furnished by the assessee.

Therefore, the Tribunal came to the conclusion that the assessee has discharged the initial burden cast upon them and thereafter the burden shifts

on the department to prove otherwise. The Tribunal also noted that the power of the Appellate Authority to be co-terminus with that of the assessing officer. However, the appellate authority did not call for any information or examined any of the documents which were produced before the Appellate Authority as well as before the Assessing Officer. Therefore, the Tribunal held that the Appellate Authority has not pointed out any defect or discrepancy in the findings and details furnished by the assessee but merely upheld the order of the assessing officer in mechanical manner.

Thus, having considered carefully and upon going through the assessment order, the order passed by the Appellate Authority we find that the learned Tribunal was fully justified in allowing the assessee's appeal and setting aside the order passed by the assessing officer as affirmed by the appellate authority.

Thus, the appeal fails and dismissed.

Substantial questions of law are answered against the revenue.

The applications, accordingly, also disposed of.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)