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

ITAT/220/2024
IA NO: GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS
JANHAVI PROMOTERS PVT LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE BIVAS PATTANAYAK
DATE : February 05, 2025.

Appearance :
Mr. Om Narayan Rai, Sr. Adv.
Mr. Soumen Bhattacharjee, Adv. ...for appellant.

Mr.Avra Mazumder, Adv.
Mr. Girdhar Dhelia, Adv.
Mr. Suman Bhowmik, Adv.
Mr. Samrat Das, Adv.
Ms. Elina Dey, Adv.
Mr. Sourendra Nath Banerjee, Adv. ...for 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 30.1.2024 passed by the Income Tax Appellate Tribunal "SMC" Bench, Kolkata [Tribunal] in ITA NO.1260/KOL/2023 for the assessment year 2011-12. 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.15,00,000/- that had been made on account of unexplained cash credit under section 68 of the Income Tax Act, 1961 when neither the identity nor the creditworthiness of the party has not been established ?

b. Whether the learned Tribunal has committed substantial error in law in directing the AO to delete the addition made under section 68 of the Income Tax Act, when the genuineness of the transaction in the form of unexplained cash raised by the assessee company from the company was not proved and also whose nature and source is not explained ?

c. Whether the learned Tribunal has committed substantial error in law in holding that the assessee has proved the identity and genuineness of transaction, ignoring the decision of the Hon'ble Supreme Court in the case of Novodaya Cstle [P] Ltd. [2015] 59 Taxmann.com 18[SC] wherein the Apex court held that certificate of incorporation, PAN etc were not sufficient for the purpose of the identification of subscriber Company transaction when there is material to show that concrete evidence available in the form of ITD system data ?

d. Whether the learned Tribunal has committed substantial error in law in holding that the assessee has proved the identity and genuineness of the transaction, ignoring the decision of Calcutta High Court in the case of Precision Finance Ltd. [2008 IT 465] has held that mere proof of identity of creditor or that the transactions were by cheque is not sufficient, thus holding that the assessee has to establish the identity of his creditors, capacity of creditors to advance money; and Genuineness of transaction?

e. Whether the learned Tribunal has committed substantial error in law in not considering the judicial Principles laid down in the matter of Pr. CIT 5, Kolkata Vs Swati Bajaj reported in 2022 SCC Online 1572 [Cal] ?"

The learned Tribunal had allowed the assessee's appeal on the ground that the source of verification provision was inserted under section 68 on and from Finance Act, 2012 with effect from 1.4.2013 and it cannot have retrospective effect for the assessment year 2011-12, the year under consideration. However, this view appears to be inconsistent with the view taken by this court in Neelkantha Commosales [P] Ltd. vs. ITO [2022] 135 taxmann.com 326 [Cal.]. It is no doubt true that the case on hand can be brought on under one of the exceptions drawn by Central Board for preferring appeal before this court nonetheless, we are of the view that the tax effect in the instant case is Rs.4,95,000/-. Therefore, we are of the view that the legal issue which has been raised by the appellant/revenue in this appeal has to be left open since there are other decisions which the learned senior counsel for the revenue relied upon. Therefore, considering the peculiar facts and circumstances of the case, we are not inclined to interfere with the order passed by the learned Tribunal.

Accordingly, the appeal is dismissed. However, the legal issue which was decided by the Tribunal is left open and the questions of law raised by the appellant/revenue is also left open to be heard and decided in an appropriate manner.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(BIVAS PATTANAYAK, J.)

pkd/GH.