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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INICOME TAX]
ORIGINAL SIDE

ITAT/221/2024
IA NO: GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 2 KOLKATA
VS
DAMANI INFRACON PVT LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 23rd April, 2025.

Mr. Soumen Bhattacharjee, Adv.
Mr. Ankan Das, Adv.
Ms. Shradhya Ghosh, Adv. …for petitioner.

Mr. Sounak Banerjee, Adv.
Mr. Rahul Auddy, Adv.
Mr. Aditya Gooptu, Adv. …for respondent.

The Court : This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 [the Act] is directed against the order dated 27.10.2023 passed by the Income Tax Appellate Tribunal "SMC" Bench, Kolkata [Tribunal] in ITA NO.629/KOL/2003 for the assessment year 2009-10.

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

"*a. Whether the learned ITAT has committed substantial error in law by deleting the addition of Rs.35,00,000/- made by the Assessing Officer under section 68 of the Income Tax Act, 1961 despite the assessee failing to establish the genuineness of the transactions and identity and creditworthiness of the creditors?*

b. Whether the learned ITAT has committed error in law by deleting the addition of Rs.35,00,000/- made by the Assessing Officer under section 68 of the Income Tax Act, 1961 despite the Assessing Officer providing a fund trail which *established that the assessee's own unaccounted cash had been routed through multiple companies ?*

c. Whether the learned ITAT has committed substantial error in law by deleting the addition of Rs.35,00,000/- despite the Assessing Officer providing the trail of fund movements starting with the cash deposits and further movement of funds the same day itself or in the next 1 or 2 days and that such movement is stopped after reaching the account of beneficiary i.e. the assessee ?"

We have heard Mr. Soumen Bhattacharjee, learned advocate for the appellant and Mr. Sounak Banerjee, learned advocate for the respondent.

The learned advocate appearing for the respondent/assessee had submitted that the respondent/assessee has put into liquidation process and pursuant to a petition filed by the Punjab National Bank under section 7 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal, Kolkata Bench-I in CP(IB) 1927/KB/2019 the matter was adjourned to enable the learned advocate appearing for the appellant/department to get instruction.

Learned advocate appearing for the appellant/department has been orally instructed that it is a fact that the matter dealt with by the NCLT and an order appointing Resolution Professional has also been passed. However, it has been informed by the Assessing Officer that this fact was not brought to the notice of the Assessing Officer by the respondent/assessee. Be that as it may, as on date, the proceedings have been initiated and orders have been passed by the NCLT and the proceedings are in progress. If that be the factual position in terms of the decision of the Hon'ble Supreme Court in the case of *Sundaresh Bhatt, Liquidator of ABG Shipyard vs. Central Board of Indirect Taxes and Customs, (2023) 1 SCC 472,* there is a bar in the Income Tax department to proceed further with the matters as the provision of the Insolvency and Bankruptcy Code has overriding effect over other statute. In the said decision it was held that once moratorium was imposed in terms of section 14 or section 33(5) of the IBC the authority namely, the Income Tax Authority or the Central Excise Authority or Customs Authority only has a limited jurisdiction to assess/determine the quantum of duty or other levies and they do not have the power to initiate recovery of dues by means of sale/confiscation of the property as provided under the Customs Act. This legal principle would apply with full force to the case on hand as well. Therefore, the appellant/department cannot further prosecute this appeal. For such reason, the appeal stands disposed of accordingly. The substantial questions of law are left open.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)

Pkd./S.Das
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