OD-21

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

ITAT/236/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX 13 KOLKATA
VS
S K AGARWALA AND CO.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 7th February 2025.

Appearance :
Mr. Aryuak Dutt, Adv.
Mr. Amit Sharma, Adv.
...for appellant.
Mr. Suman Bhowmik, Adv.
Mr. Nilanjan Bhattacharyya, Adv.
Mr. Samrat Das, Adv.
Mr. Alishan Hossain, Adv.
....for respondent

The Court :- This intra court appeal filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated December 5, 2023 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata in ITA/ 485/Kol/2023 for the assessment year 2016-17.

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

i) Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in upholding the order of the Commissioner of Income Tax (Appeals) and quashing the addition of Rs.3,95,00,000/- made under Section 68 of the Income Tax Act, 1961 on account of loan received as unexplained cash credit where the respondent assessee has failed to prove the identity, creditworthiness of the loan creditors and genuineness of the transactions?

ii) Whether the Learned Income Tax Appellate Tribunal is justified in dismissing the appeal of the revenue and upholding the order of the CIT(A) deleting the addition made under Section 68 of the Income Tax Act, 1961 without appreciating that the respondent assessee had taken loan from various entities who were practically doing no business and simply living on papers as shell companies and their creditworthiness was highly questionable ?

iii) Whether in the facts and circumstances of the case, the Learned Income Tax Appellate Tribunal has committed substantial error in law in upholding the order of the CIT(A) deleting the addition made under Section 68 of the Income Tax Act, 1961 as the Learned Tribunal has ignored the facts that the creditworthiness of loan creditors was not established before the Assessing Officer during the assessment proceedings though the onus of proving the identity of the loan creditors and their creditworthiness is on the assessee company ?

We have heard learned Counsel on either side.

The assessee filed their return of income for the assessment year under consideration namely 2016-17 on 15.10.2016 declaring a total income of Rs. 70,75,050/-. Return was processed under Section 143(1). Thereafter the case was selected under manual compulsory guidelines of CBDT, pursuant to which notice under Section 143(2) was issued on 8.8.2017 and subsequent notice under Section 142(1) along with questionnaire was issued on 2.7.2018. In response to the notices authorised representative of the assessee appeared before the assessing officer and filed their statements and documents. The assessing officer completed the assessment by order dated 21.12.2018. At the outset, we need to point out that the assessment order is a very elaborate order wherein the assessing officer has examined each and every transaction done by the assessee namely the unsecured loan availed by the assessee from certain entities. After examining the entire fact the assessing officer has come to a conclusion that the assessee failed to prove the onus cast upon them, under Section 68 of the Act namely the identity and creditworthiness of the persons from whom the monies were taken and the genuineness of the transaction.

Consequently, the addition was made. The assessee carried the matter on appeal before the National Faceless Appeal Centre (NFAC), Delhi. The appeal was allowed by order dated 16.3.2023. The order though appears to be a fifteen page order the conclusion and decision of the Appellate Authorities is confined to only three paragraphs namely paragraphs 5.2, 5.3 and 5.4. The remaining paragraphs are reference to certain decisions of the High Courts and extract of Section 68 and the Appellate Authority proceeded to allow the appeal. The revenue carried the matter on appeal to the learned Tribunal which by the impugned order has dismissed the appeal on the ground that the order passed by the CIT(A) is a well reasoned order which has been passed after taking into account all aspects of the matter. Unfortunately, neither the order passed by the CIT(A) nor that of the Tribunal is a speaking order. As pointed out earlier, the assessing officer has done an elaborate exercise by examining each and every transaction of the eight parties from whom the assessee is said to have obtained unsecured loans.

The factual exercise done by the assessing officer was not re-examined by the CIT(A) nor by the Tribunal. The CIT(A) being the first Appellate Authority and the power conferred under Section 251 of Act being co-terminus, the assessing officer was bound to examine the correctness of the factual finding recorded by the assessing officer. This exercise has not been done by the CIT(A). By way of illustration we can point out that some of the companies which are said to have extended unsecurd loan to the assessee have no existence at all or no business activity or having negligible surplus income and one of the companies have also been struck off from the Registrar of Companies maintained by the Regional Director of Company Affairs under the provisions of the Companies Act.

Therefore, we are of the view that the matter requires to be reheard by considering in detail the correctness of the factual finding recorded by the assessing officer.

For such reason, we are inclined to interfere with the order passed by the learned Tribunal as well as that of the order passed by the NFAC. Accordingly, the appeal is allowed. The impugned order passed by the learned Tribunal is set aside and also the order passed by the NFAC dated 16.3.2023 is set aside, and the matter is remanded to the NFAC to consider all the factual issues which were raised and considered by the assessing officer. The documents which were taken note of and all attendant circumstances and thereafter pass a speaking order on merits and in accordance with law.

The appeal is allowed on the above terms and consequently, the questions of law are left open.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.