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IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITAT/256/2024
GA/2/2024
M/S. JKM INVESTMENT PRIVATE LIMITED
VS
DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-12, KOLKATA

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S SIVAGNANAM
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date :9th June, 2025

Appearance :
Mr. Anirban Banerjee, Adv.
Mr. Sayantan Banerjee, Adv.
Mr. Deep Agarwal, Adv.
..for the appellant.

Mr. Soumen Bhattacharjee, Adv.
Mr. Ankan Das, Adv.
Ms. Shradhya Ghosh, 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 19th February, 2024 passed by the Income Tax Appellate Tribunal, A - Bench, Kolkata (the Tribunal) in ITA/380/Kol/2013 for the assessment year 2009-10.

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

"(i) *Whether payment by cheque and subsequent reflection of the same in the ledger establish the verity of the expenses under the Income Tax Act, 1961?*

(ii) *Whether payment by formal banking transactions and subsequent reflection of the same in the Books of Accounts duly audited is a sufficient proof to establish the genuineness of the expenses?*

(iii) *Whether the Tribunal erred in coming to the conclusion that expenses duly recorded in ledger and payment through bank does not establish the genuineness of the claim for expenses incurred for levelling of ground and setting up for fence?*

(iv) *Whether the Tribunal erred in confirming the order of the assessing officer and setting aside the order of the Ld. CIT(A) that partly allowed the expenditure of the assessee?*

(v) *Whether the Ld. Tribunal failed to re-consider the order of the Hon'ble High Court that allowed the expenditure and directed the Tribunal to reassess the expenditure?"*

We have heard Mr. Anirban Banerjee, learned counsel appearing for the appellant/assessee and Mr. Soumen Bhattacharjee, learned standing counsel appearing for the respondent/revenue.

The assessee filed the return of income on 30.9.2009 disclosing income of Rs.10,42,91,660/-. The assessing officer completed the assessment under Section 143(3) of the Act and determined the total income at Rs.16,52,56,120/- and while doing so, disallowed the claim of the assessee for expenditure on account of payment of non-compete fee to M/s. Mittal Corporation Ltd. to the tune of Rs.1,51,00,000/-, disallowed loss on sale of land to the tune of Rs.3.55 crores and disallowed the leveling and fencing expenditure claimed at Rs.57.27 lakhs etc.

The assessee being aggrieved by such order filed an appeal before the Commissioner of Income Tax (Appeals) – XII, Kolkata [CIT(A)]. The CIT(A) by order dated 30.11.2012 partly allowed the assessee's appeal. Aggrieved by the same, the revenue preferred appeal before the learned Tribunal in ITA/380/Kol/2013 and the Tribunal by order dated 19.1.2018 partly allowed the revenue's appeal. In so far as the claim made by the assessee for expenses incurred towards leveling and fencing, the Tribunal held that mere production of ledger account and payment by way of cheques would not suffice and for such reason, upheld the order passed by the assessing officer and reversed the findings of the CIT(A).

The assessee filed an appeal before this Court in ITA/43/2019 and by judgment dated 9.4.2019 the order passed by the learned Tribunal dated 19.1.2018 was set aside on one issue and the Tribunal was directed to determine the issue upon hearing the parties within a time frame. On demand to the learned Tribunal, the matter was taken up and by the impugned order the appeal filed by the assessee has been dismissed. The first issue which will arise for consideration is whether the assessee was required to file an application under Rule 29 of the Appellate Tribunal Rules, 1946 with leave to bring on record additional evidence. The learned Tribunal was of the view that since no such application was filed by the assessee in terms of Rule 29, and also taking note of the directions issued by this Court in ITA/43/2019 dated 9.4.2019, the learned Tribunal refused to re-appreciate the material which was already available on record and in the absence of any material produced by the assessee in the original round of litigation except copy of a ledger showing expenditure, the addition which was made to the tune of Rs.55,27,558/- was restored. As mentioned above, ITA/43/2019 filed by the assessee was disposed of by judgment dated 9.4.2019 and while doing so, the order passed by the learned Tribunal dated 19.1.2018 was set aside in respect of one issue, namely, with regard to the claim of expenses for fencing and leveling. The Hon'ble Division Bench while remanding the matter to the learned Tribunal, took note of the submission of the assessee that the sum of Rs.57,27,558/- was paid by the assessee from its account but they have documents to establish such payments were genuine apart from the ledger which was produced before the learned Tribunal. Taking note of this submission, the Hon'ble Division Bench observed that a chance has to be given to the assessee to prove its case making it clear that they have to establish the case before the Tribunal in a summary manner from the disclosed documents and there is no scope of any long drawn procedure of producing further documents adducing oral and documentary documents etc. and if on the basis of the available evidence, the Tribunal is able to convince itself that the above expense was actually incurred by the assessee and allowable, it will pass an appropriate order. In the light of the order of remand passed by this Court in the earlier round of litigation, the necessity to file application under Rule 29 of the Applicable Tribunal Rules, 1946 would not arise in the instant case. The learned Tribunal noted that the assessee has filed photostat copies of certain bills in the form of Annexures B1 to H11. This, according to the assessee, is to prove and corroborate the ledger entries.

In the facts and circumstances it has to be seen as to whether the scope of enquiry by the learned Tribunal in terms of the order of remand passed by the Hon'ble Division Bench of this Court dated 9.4.2019 should be construed as a long drawn procedure for verification of the documents. The assessee having been given an opportunity to prove its case, it goes without saying that the assessee can support the ledger entries by certain documents and this cannot be construed to be a long drawn process of verification by adducing oral and documentary evidence. In any event, if the assessee has in its possession certain documents to prove ledger entries, we are of the view that such opportunity should not be denied to the assessee as tax has to be levied and collected on the correct income and nothing more. Therefore, we are of the view that the matter should be remanded to the assessing officer to enable the assessee to produce the documents which were filed before the learned Tribunal in Annexures B1 to H11 so as to enable the assessing officer to examine those documents and take a decision as to whether the assessee has been able to establish the genuineness of the expenditure claimed by them by corroborating the same with the ledger entries. For such reasons, we are inclined to interfere with the order passed by the learned Tribunal and remand the matter to the assessing officer for considering the above aspect alone. Accordingly, the appeal is allowed. The order passed by the learned Tribunal is set aside and the matter stands remanded to the assessing officer to consider the documents which were filed before the learned Tribunal as Annexures B1 to H11 and afford an opportunity of personal hearing to the authorised representative of the assessee and take a fresh decision on merits and in accordance with law.

The assessee is directed to co-operate with the proceedings before the assessing officer and the entire proceedings be commenced and concluded within four months from the date of receipt of the server copy of this order.

For the above reasons, the substantial questions of law suggested by the assessee are left open.

In the result, the appeal stands disposed of and the connected application stands closed.

(T.S SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)

S.Das/
AR[CR]