OD-9

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

ITAT/257/2024
IA NO: GA/2/2024
AIM CREDIT CAPITAL PRIVATE LIMITED
VS.
INCOME TAX OFFICER, WARD-4(3)

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 10th January, 2025

Appearance :
Mr. Anirban Banerjee, Adv.
Mr. Sayantan Banerjee, Adv.
Mr. Sourav Saha, Adv.
...for Appellant
Mr. Amit Sharma, Adv.
...for Respondent

The Court : This appeal has been filed by the assessee under section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated 8th March, 2024 passed by the Income Tax Appellate Tribunal, Bench "C", Kolkata (Tribunal) in ITA No.105/Kol/2021, for the assessment year 2012-13.

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

i) Whether the Assessing Officer erred in confirming the sundry creditor amount which was duly shown in the accounts on the ground that no details were entered in the accounts by the assessee ?

ii) Whether the liabilities of the assessee shown as advance receipts as a sundry creditor, which are split into four individuals identities were disclosed by the Assessee/Company ?

iii) Whether the CIT (Appeal 1) Kolkata erred in confirming the order of the Assessing Officer ?

iv) Whether under the Income Tax Act, 1961, the Assessee/Company never transacted any amount with the four shareholders ?

We have heard Mr. Anirban Banerjee, learned counsel appearing for the appellant/assessee and Mr. Amit Sharma, learned standing counsel for the revenue/department.

After elaborately hearing the learned Advocates for the parties and carefully perusing the materials placed on record, we find that the assessee was aggrieved by the order passed by the Commissioner of Income Tax (Appeals) – 13, Kolkata [CIT(A)], dated 3rd March, 2020, by which the appeal filed by the assessee challenging the assessment order dated 29th March, 2015 was dismissed on the ground that the assessee did not appear in spite of numerous opportunities being afforded to him. The CIT(A) has not rendered any finding on the merits of the contentions advanced on the grounds which were raised in the memorandum of appeal. When the matter came up to the Tribunal, the Tribunal noted the fact that the appeal filed before the CIT(A) was dismissed on the ground of non-prosecution and proceeded to examine the contentions advanced by the assessee.

We find that the learned Tribunal has rendered certain factual finding with regard to the books of accounts maintained by the assessee. However, with regard to such books of accounts, the CIT(A) has not rendered any factual finding. On perusal of the assessment order dated 29th March, 2015, we find the Assessing Officer was not sure as to whether it is a case of unexplained cash credit under Section 68 of the Act or whether the provisions of Section 41(1) of the Act would be attracted. Before the first Appellate authority the assessee contended that the addition made was not justified under Section 14A read with Rule 8D(2) of the Income Tax Rules as no income was received during the period under consideration so as to attract the provisions of Section 14A.

Thus, we are of the view that one more opportunity can be granted to the assessee to contest the appeal before the first Appellate authority on merits. Such approach is required to be taken in the instant case because the documents and books of accounts which were placed by the assessee have to be re-examined so as to enable the CIT(A) to come to a conclusion as to whether the finding rendered by the Assessing Officer was justified.

Therefore, we are inclined to remand the matter back to the CIT(A) for fresh consideration.

Accordingly, the appeal is allowed.

The order passed by the learned Tribunal as well as the order passed by the CIT(A) dated 3rd March, 2020 are set aside and the matter stands remanded to the first Appellate authority for consideration of the appeal afresh on merits and in accordance with law.

In the light of the above, the substantial questions of law raised by the assessee are left open.

The stay application being IA NO: GA/2/2024 stands disposed of.

(T.S. SIVAGNANAM, C.J.)

(HIRANMAY BHATTACHARYYA, J.)

SN.
AR(CR)