O-11

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

ITAT/264/2024
IA No.GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-1, KOLKATA
VS
MALLCOM VSFT GLOVES PVT. LTD (ERLIER KNOWN AS VSFT QUILTS AND PILLOWS PVT. LTD.)

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 9th June, 2025.

Appearance :
Mr. Prithu Dhdhoria, Adv.
...for appellant

Ms. Megha Agarwal, 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 February 23, 2024 passed by the Income Tax Appellate Tribunal, 'C' Bench, Kolkata (Tribunal) in ITA No.1215/Kol/2018, for the assessment year 2012-13.

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

a) Whether on the facts and circumstances of the case, the Learned Income Tax Appellate Tribunal has committed substantial error in law in deleting the addition of Rs.5,07,00,000/- made u/s 68 of the act on account of bogus share capital & premium?

b) Whether on the facts and circumstances of the case, the Learned Income Tax Appellate Tribunal has committed substantial error in law in deleting the addition of Rs.5,07,00,000/- u/s 68 of the Act by observing that the assessee company had submitted bank statement, audited accounts, copy of income tax acknowledgement, copy of PAN card of each shareholder without considering that, the same was not the litmus test to discharge the burden on the assessee to establish creditworthiness of the investing companies as well as the genuineness of the transaction as held by the Jurisdictional High Court in the case of M/s. BST Infratech Ltd [161 taxmann.com 668]?

c) Whether on the facts and circumstances of the case, the Learned Income Tax Appellate Tribunal has committed substantial error in law in not considering that in the case of closely held companies, there is additional onus to prove the source of money in the hands of such shareholders or person making payments towards issue of shares before such sum is accepted as genuine credit, as held by the Jurisdictional High Court in the case of PCIT vs M/s BST Infratech Ltd?

We have heard Mr. Prithu Dudhoria, learned standing counsel appearing for the appellant/revenue and Ms. Megha Agarwal, learned advocate for the respondent/assessee.

The revenue is aggrieved by the impugned order passed by the learned Tribunal in allowing the assessee's appeal and setting aside the order passed by the Commissioner of Income Tax (Appeals) 3, Kolkata [CIT(A)] dated 15th March, 2018. The said order passed by the CIT(A) arose out of an assessment order passed by the Assessing Officer under Section 143(3) of the Act dated 30th March, 2015. The Assessing Officer by the said assessment order treated a sum of Rs.5,07,00,000/- as unexplained cash credit and accordingly added the same to the total income of the assessee. The assessee challenged the order before the CIT(A), which appeal was dismissed and aggrieved by such order the assessee approached the Tribunal.

After we have elaborately heard the learned counsel for the parties and carefully perused the materials placed on record, we find that the Assessing Officer has committed a factual mistake which has ultimately led to an order being passed without reference to the nature of the activities done by the assessee. The Assessing Officer proceeded on the basis that the assessee is a company engaged in investment in shares and trading of shares. This finding is factually incorrect as the assessee is a manufacturing company and they have set up their unit in the Falta Special Economic Zone after obtaining the requisite letter of permission from the Development Commissioner, Falta Special Economic Zone dated May 5,2006. The Development Commissioner of the Falta Special Economic Zone has certified that the assessee has been granted approval for setting up of a unit for manufacture and export of quilts and pillows vide letter of approval dated 5th May, 2006. This fundamental error committed by the Assessing Officer is grave and it has impacted the assessment order in toto. This aspect of the matter has not been duly appreciated by the CIT(A). Furthermore, we find from the assessment order that the assessee had submitted reply to all the queries which have been raised and responded to the notices which were issued. The Assessing Officer records that the replies received from the assessee company are kept on record and the details and contentions of the assessee company were perused and considered. However, the same are not acceptable. No reasons are forthcoming as to why the replies, details and documents produced by the assessee are not acceptable by the Assessing Officer. Furthermore, the Assessing Officer observes that there was compliance on the part of the assessee company but in turn would state that certain facts are not clear. This again is a very vague statement as the Assessing Officer could have very well verified this factual issues which required clarification. Before the learned Tribunal the assessee had produced the necessary documents in the form of a paper book containing 436 pages which discloses the entire details namely, share application forms, source of funds, bank statement, audited accounts, copy of income tax acknowledgment and copy of PAN card. The learned Tribunal has noted that the Department did not make any objection to the three ingredients which are required to be proved while making an addition under Section 68. Furthermore, the veracity of the documents which were produced by the assessee were never disputed by the Assessing Officer or by the CIT(A).

Apart from that, on facts we find that the assessee has not invested any money out of the share capital raised in any other company but the funds so raised have been used to repay its short-term and long-term loans borrowed from various banks and financial institutions. Furthermore, the assessee company has an investment of Rs.10.59 Crore in fixed assets as on 31.3.2012 and inventory of Rs.2.35 Crore for the financial year ending 31.3.2011. The assessee's export turnover was Rs.2.56 Crore. With regard to lack of business activity during the assessment year under consideration, the assessee has given an explanation stating that they were the sole suppliers to a foreign buyer namely, IKEA for supply of its goods. However, the contract was terminated on account of which the manufacturing unit of the assessee had to be closed down temporarily and thereafter during the assessment year 2014-15 the assessee commenced its business operation and consistently has been showing profit and has been paying income tax.

The financial performance and income tax payment of the assessee were also placed before the learned Tribunal commencing from the financial year 2007-2008 to 2022-2023. Considering all these issues the learned Tribunal, in our view, rightly held that the document details and evidence produced by the assessee are sufficient to fulfill the three criteria as required under section 68 of the Act. Thus, we find the matter to be entirely factual and no question of law much less substantial question of law arises for consideration.

The learned advocate appearing for the respondent/assessee placed reliance on the decision of this court in the case of Principal Commissioner of Income Tax-1, Kolkata vs. True Man Consultants Pvt. Ltd., ITAT/203/2024 dated 25.4.2025 wherein this Court affirmed the order passed by the Tribunal on the ground that the assessee therein had satisfied the three conditions required to be satisfied under section 68 of the Act. The learned advocate appearing for the assessee also placed reliance on the decision of this Court in the case of Principal Commissioner of Income Tax-2, Kolkata vs. M/s. Naina Distributors Pvt. Ltd., ITAT/113/2023 dated 28.6.2023 which is also to the same effect as that of the decision in the case of True Man Consultants Pvt. Ltd.

In the result, the appeal filed by the revenue is dismissed on the ground that no question of law arises for consideration.

.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

SN/S.Pal/PKD/mg
AR(CR)