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

ITAT/266/2024
IA NO: GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX 5 KOLKATA
VS
ADVANCE ENGINEERING CORPORATION

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

Mr. Amit Sharma, Adv. …for appellant.

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 12.12.2023 passed by the Income Tax Appellate Tribunal "SMC" Bench, Kolkata (the Tribunal) in ITA/257/Kol/2023 for the assessment year 2011-12.

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

> "a. Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in law to restrict the addition to only 8% of the total bogus purchases even after taking cognizance of the fact that the respondent assessee has failed to establish the genuineness of the purchases?
> b. Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in law to grant substantial relief to the respondent assessee by ignoring the findings of the search and seizure operation conducted against the bogus bill provider Shri Sanjiw Kumar Singh as well as the seized documents which were found along concomitantly with the statements of various related parties which clearly establishes the doubt to arrive at a

conclusion that the respondent assessee had availed accommodation entries in the form of bogus purchases which thereby gives rise to perversity in the decision making process?"

We have heard Mr. Amit Sharma, learned senior standing counsel for the appellant/revenue. Though notice has been served on the assessee and affidavit of service has been filed, none appears for the respondent/assessee.

The revenue is aggrieved by the impugned order passed by the learned Tribunal allowing the assessee's appeal and set aside the order passed by the first appellate authority dated 27.1.2023. By the said order the first appellate authority affirmed the order passed by the assessing officer dated 27.12.2018 under section 147 read with section 143(3) of the Act by and which the claim made by the assessee towards the purchases amounting to Rs.18,41,476/- was treated as bogus expenditure under section 69C of the Act and 2% of the said bogus expenditure, i.e., Rs.36,829/- as commission which was made from some undisclosed sources was also disallowed as unexplained expenditure under section 69C of the Act and added back to the total income of the assessee for the assessment year under consideration. The assessee preferred appeal before the appellate authority and by a detailed order dated 27.1.2023 the assessee's appeal was dismissed. The assessee challenged the said order before the learned Tribunal. As could be seen from paragraph 3 of the impugned order, the factual position is not in dispute namely, that the assessee failed to establish the genuineness of the actual purchases made and there is undisclosed profit. In fact, this is an admitted case of the assessee and the Tribunal also affirmed the findings so recorded by the assessing officer as well as the first appellate authority. Having done so, the resultant order which would normally flow from such finding is to dismiss the appeal filed by the assessee. However, the learned Tribunal observed that in the 'interest of justice' the assessee's gross profit in respect of the alleged bogus purchases can be fixed at 8% on the said amount and, accordingly, it restricted the gross profit to that extent and partly allowed the assessee's appeal. The question would be whether the learned Tribunal was justified in doing so, in our view, the learned Tribunal could not have exercised such discretion and fixed the assessee's gross profit at 8% after having come to the conclusion that the assessee has failed to establish the genuineness of the actual purchases as could be seen from the assessment order. The case has a chequered history and one Shri Sanjiw Kumar Singh, who is supposed to be an entry operator has been behind the scene, who was subjected to investigation by the Directorate of Investigation as he was providing accommodation entries either from bogus sales of goods through dummy entries to various beneficiaries in lieu of commission. The assessee is one such beneficiary. The assessment order discuses the entire factual position. It also takes note of the statement which has recorded from various witnesses including that of the Sanjiw Kumar Singh and after considering the entire modus operandi the assessing officer arrived at a conclusion that the expenditure is bogus and, consequently, the commission said to have been paid from an undisclosed source is also to be treated as unexplained expenditure. The first appellate authority tested the correctness of the order of the assessing officer in a very elaborate manner and took note of all the factual positions. However, since the assessee did not respond to the notices, the appeal was dismissed. In any event, the Tribunal having come to the conclusion that the assessee failed to establish the genuineness of the actual purchases, could not have extended any sympathy under the guise of meeting the ends of justice and fixing the gross profit at 8%.

Therefore, we are of the view that such finding rendered by the learned Tribunal is erroneous and, accordingly, set aside. In the result, the appeal is allowed and the impugned order passed by the learned Tribunal is set aside and the assessment order dated 27.12.2018 as affirmed by the appellate authority stands restored. The substantial questions of law are answered in favour of the revenue.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)

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