

OD - 5

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

ORIGINAL SIDE

ITAT/270/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS
SUBHALAXMI CHEM PVT LTD

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S SIVAGNANAM
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 17th July, 2025

Appearance :
Mr. Tilak Mitra, Adv.
Mr. Soumen Bhattacharjee, Adv.
Mr. Ankan Das, Adv.
Ms. Shradhya Ghosh, Adv.
..for the appellant.

Mr. Ankit Daga, Adv.
Mr. Rosy Banerjee, Adv.
Mr. Swapna Das, Adv.
Mr. Siddharth Das, 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 15, 2024 passed by the Income Tax Appellate Tribunal, SMC Bench, Kolkata (the Tribunal) in ITA/992/Kol/2023 for the assessment year 2011-12.

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

- i) *Whether the Learned Tribunal has committed substantial error in law in allowing the appeal of the assessee by quashing the reassessment order passed under section 147/143(3) dated 26.11.2018 without paper examination of the case and ignoring the contention of the Assessing Officer and CIT(A) ?*
- ii) *Whether the Learned Tribunal has committed substantial error in law ignoring the statement of Sri Parameswar Taparia who categorically disclosed that the share application money of Rs.45,00,000/- was refunded and no income against the investment was earned by M/s. Ajanta Vanijya Pvt. Ltd. ?*

We have heard Mr. Tilak Mitra, learned standing counsel for the appellant/revenue and Mr. Ankit Daga, learned advocate for the respondent/assessee.

The revenue is aggrieved by the impugned order passed by the learned Tribunal by which the assessee's appeal was allowed and the reassessment order passed under Section 143(3) read with 147 of the Act dated 26.11.2018 as upheld by the appellate authority by order dated 24.7.2023 was set aside. The Tribunal has made a thorough examination of the factual position and it found that the facts recorded by the assessing officer are incomplete as the assessing officer has taken only the share capital of Rs. 44,50,000/- and net profit of Rs.41,358/- while capital reserve of Rs.3,91,50,000/- which was coming from the earlier years was not considered. Therefore, the Tribunal observed that the total fund such as share capital, reserve and surplus and net profit ought to be taken into account for determining the creditworthiness whereas the assessing officer has omitted to consider the amount of capital reserve while recording his satisfaction as to the creditworthiness of the investor.

One more issue which is apparent on the face of the re-assessment order is that the notice under Section 148 was issued to the assessee on 23.3.2019 and the assessee filed its return of income on 31.7.2018. Thereafter, notice under Section 143(2) of the Act was issued and served on the assessee on 6.8.2018 and subsequently, a notice under Section 142(1) of the Act along with the questionnaire was issued and served on the assessee on 28.8.2018. The assessee filed their objection to the reasons which were recorded in the notice dated 23.3.2018. However, the assessing officer disposed of the objection rejecting the stand taken by the assessee by an order dated 11.9.2018. Thereafter, reassessment proceedings were initiated and during the course of the reassessment proceedings notice under Section 131 of the Act was issued to the Director/Managing Director of the company on 12.11.2018 for his personal appearance and a statement was recorded. Based on such statement, reassessment order was passed.

Thus, it is evidently clear that the statement which was recorded on 12.11.2018 was much after the notice which was issued under Section 148 of the Act dated 23.3.2018 and therefore, even assuming there was no material in the statement, the same cannot justify reopening of the assessment. Therefore, the reopening of the assessment is bad in law.

As observed earlier, the learned Tribunal has noted the facts as also taken note of the submissions made by the assessee as regards the documents which were placed by the assessee before the assessing officer during the reassessment proceedings and there

is no observation made by the assessing officer rejecting those documents or stating that the stand taken by the assessee is incorrect.

In such circumstances, the learned Tribunal was fully justified in allowing the assessee's appeal.

Thus, we find no questions of law, much less substantial questions of law, arising for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

The stay application, IA NO: GA/2/2024, also stands dismissed.

(T.S SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

