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

ORIGINAL SIDE

ITAT/272/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX 5 KOLKATA
VS
ADVANCE ENGINEERING CORPORATION

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

Appearance :
Mr. Amit Sharma, Adv.
..for the appellant.

The Court : Though notice has been served on the respondent/assessee, none appears for the respondent/assessee.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated December 12, 2023 passed by the Income Tax Appellate Tribunal, SMC Bench, Kolkata (the Tribunal) in ITA/258/Kol/2023 for the assessment year 2012-13.

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

"i) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT has erred in law in deleting the entire addition of Rs. 1,68, 827/- on account of bogus purchases even after taking cognizance of the fact that the assessee has failed to establish the genuineness of the actual purchases ?

ii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT has erred in law in allowing substantial relief to the 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 found and statements of various related parties which establish beyond doubt that the assessee availed accommodation entries in the form of bogus purchase thereby giving rise to the vice of perversity in the decision making process?*

The learned Tribunal passed a common order for two assessment years, namely, 2011-12 and 2012-13. The present appeal relates to the order passed by the learned Tribunal for the assessment year 2012-13. As against the order passed for the assessment year 2011-12, the revenue filed an appeal before this Court in ITAT 266 of 2024 which was allowed by judgment dated June 9, 2025. The factual position in both the cases are identical though in the case relating to the assessment year 2011-12 the Tribunal though held against the assessee substantially, ultimately while passing the order took a lenient view and observed that in the interest of justice the assessee's gross profit in respect of the alleged bogus purchases can be fixed at 8 per cent. This finding was not approved by this Court and the appeal filed by the revenue was allowed. The operative portion of the judgment reads as follows :-

" … …. …. ….

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."

The factual position which has brought out in the above judgment with regard to the role played by an entry operator one Sanjiw Kumar Singh has also an impact for the assessment year 2012-13. However, the learned Tribunal ignored this aspect of the matter and deleted the addition made by the assessing officer. As held in the afore-mentioned judgment, the facts were clearly established that the assessee is one of the beneficiaries of the bogus sales of goods through dummy entries to various beneficiaries in lieu of commission and this aspect has been very elaborately brought out in the assessment order dated 27.12.2018 passed under Section 143(3) read with 147 of the Act. Further, the statement which was recorded from various witnesses including that of Sanjiw Kumar Singh were considered 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 was also treated as an unexplained expenditure.

This order passed by the assessing officer was affirmed by the National Faceless Appeal Centre (NFAC). By order dated 21.7.2023 the Tribunal by allowing the assessee's appeal has not disclosed any of the facts and in a single line stated that the assessing officer while making the addition has failed to bring on record any evidence from which it can be established that the assessee has made any unaccounted purchases from any party. This finding recorded by the learned Tribunal is factually incorrect as could be seen from the reassessment order as well as the order passed by the appellate authority. Thus, we hold that the order passed by the learned Tribunal calls for interference.

Accordingly, the appeal filed by the revenue is allowed and the substantial questions of law are answered in favour of the revenue.

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

(T.S SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

S.Das/SN.
AR[CR]