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

ITAT/298/2024
IA NO:GA/1/2025

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
VS.
AMBE TEX FAB (INDIA) PVT. LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Dated : 7th March, 2025.

Appearance:

Mr. Om Narayan Rai, Sr. Adv.
Mr. Prithu Dudhoria, Adv.
..for Appellant/revenue

THE COURT : This appeal by the assessee filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 15th July, 2024 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (Tribunal) in ITA No.718/Kol/2019, for the assessment year 2012-13.

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

"(a) Whether the Learned Income Tax Appellate Tribunal was justified in law in deleting the addition in respect of share and share premium ?

(b) Whether the Learned Income Tax Appellate Tribunal was not justified in law in allowing the appeal of the assessee without considering the basic issue that astronomical cash credits in the books of the assessee in the form of share capital generated by charging hefty share premium without there being any proof of identity, creditworthiness and genuineness of the transaction clearly warranted addition in terms of section 68 of the Income Tax Act, 1961 ?"

We have heard Mr. Om Narayan Rai, learned senior Advocate, assisted by Mr. Prithu Dudhoria, learned Advocate appearing for the appellant/revenue.

Though notice has been served upon the respondent, none appears for the respondent.

The issue which falls for consideration is whether the learned Tribunal was justified in setting aside the order passed by the Commissioner of Income Tax (Appeals) -15, Kolkata [CIT(A)], dated 10th October, 2019, by which the CIT(A) affirmed the order passed by the Assessing Officer dated 30th March, 2015 under Section 143(3) of the Act. The learned Tribunal has elaborately considered the factual position and faulted the manner in which the assessment was completed by observing that it was a cryptic order without discussing the facts of the matter nor the submissions made by the assessee nor the documents produced by the assessee to prove the three factors, namely, identity, genuineness of the transactions and creditworthiness of the subscribers. Learned Tribunal also found that though such documents were once again produced before the CIT(A), but the same were not referred to nor any defect or discrepancy was pointed out under the said documents. Apart from that, the learned Tribunal has also pointed out that there are factual mistakes by the CIT(A) while passing the order which are contrary to the conclusion arrived at by the Assessing Officer. Learned Tribunal took note of the decision of the Hon'ble Supreme Court in *PCIT vs. NRA Iron & Steel (P) Ltd.* and noted that the principles which were summed up in the said decision when a case is considered under Section 68 of the Act. After noting the said decision, the learned Tribunal examined the factual position and found that the initial burden casted upon the assessee has been discharged inasmuch as the assessee had produced the documents to prove the identity of the subscribers, the genuineness of the transaction and creditworthiness of the subscribers. If such was the factual position then in terms of the order passed by the Hon'ble Supreme Court, the burden shifts on the department to prove the contrary. For doing so, it is necessary that the Assessing Officer should embark upon a fact finding exercise which, unfortunately, the Assessing Officer did not do in the instant case. The revenue cannot deny the fact that the order of assessment, as observed by the learned Tribual, is a cryptic order.

Thus, we find no question 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/1/2025 is also dismissed.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

SM/SN