

OD-19

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

ITAT/41/2024
IA NO: GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
Vs
ATLANTIC DEALERS PVT. LTD.

BEFORE:
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 3rd May, 2024.

Appearance:
Mr. Tilak Mitra, Adv.
Mr. Prithu Dudhoria, Adv.
...for the appellant

Mr. Sourav Chunder, Adv.
Ms. Mandobi Chowdhury, Adv.
...for the respondent

The Court: This appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the Act) against the order dated 8th May, 2023 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata in I.T.A. No.530/Kol/2020 for the Assessment Year 2009-10.

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 Hon'ble Income Tax Appellate Tribunal, Kolkata has erred in granting relief to the assessee/respondent and set aside the Ld. Commissioner of*

Income Tax (Appeals)'s order on account of addition on undisclosed cash credit u/s. 68 of Rs. 14,78,00,000/- for the Assessment Year 2009-10, though the assessee/respondent has failed to prove the genuineness of transaction and creditworthiness of the subscribers ?

(b) Whether on the facts and in the circumstances of the case, the Hon'ble Income Tax Appellate Tribunal, Kolkata is justified to set aside the order of Ld. Commissioner of Income Tax (Appeals) in ignoring the facts that the creditworthiness of the subscribing companies were not established before the Assessing Officer during the course of the assessment proceedings though the onus of proving the identity of the creditor vests solely with the assessee/respondent?

We have heard Mr. Tilak Mitra, learned counsel along with Mr. Prithu Dudhuria, learned standing counsel for the appellant and Mr. Sourav Chunder, learned standing counsel appearing for the respondent.

The short question which falls for consideration in the instant case is whether the addition made under Section 68 of the Act was justified. The learned Tribunal has done an elaborate examination of the factual matrix which ought to have been done by the Commissioner of Income Tax (Appeals) when the appeal was decided.

We find from the order passed by the Commissioner of Income Tax (Appeals) dated 28th July, 2017 none of the grounds raised by the assessee was considered and it is totally a non-speaking order without application of mind.

However, the learned Tribunal has examined the facts produced by the assessee not before the Tribunal for the first time but the facts which were already placed before the Assessing Officer. The Tribunal noted that the Assessing Officer did not comment upon the veracity or the admissibility of any of the details or documents produced by the assessee to prove the identity, the creditworthiness of the share subscribers and the genuineness of the transaction. It appears that only because the directors failed to respond to the notices issued, the Assessing Officer drew an adverse inference. This the learned Tribunal on facts found to be unjustified. Thus, we find that there is no question of law much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

Consequently, the application stands closed.

(T.S. SIVAGNANAM, C.J.)

(HIRANMAY BHATTACHARYYA, J.)