OD-11

ITAT/233/2022
GA/2/2022

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

PRINCIPAL COMMISSIONER OF
INCOME TAX, SILIGURI

-Versus-

SMT. NIRMALI BHADRA

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

Mr. Himangshyu Kumar Roy, Adv.
Mr. Paban Kumar Roy, Adv.
Mr. Bhaskar Sengupta, Adv.
.. . for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 16th December, 2022.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 5th June, 2020 passed by the Income Tax Appellate Tribunal, "B" SMC Bench, Kolkata (the Tribunal) in ITA No.77/Kol/2019 for the assessment years 2010-11.

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

(i) *Whether the Learned Income Tax Appellate Tribunal erred in law in holding that the amount shown in 26AS only should be taken into consideration even when the TDS certificate indicates a higher receipt ?*

We have heard Mr. Tilak Mitra, learned standing counsel appearing for the appellant/revenue and Mr.Himangshu Kumar Roy, learned counsel assisted by Mr. Paban Kumar Roy and Mr. Bhaskar Sengupta, learned Advocates for the respondent/assessee.

On going through the order passed by the learned Tribunal, we find that the learned Tribunal had done an elaborate fact finding exercise and has pointed out as to how the assessing officer erroneously relied upon only the figures mentioned in the TDS certificate and ignored Form No.26AS. For better appreciation it would be relevant to quote the finding recorded by the learned Tribunal.

> *"On perusal of the same, it shows that the assessee for this AY (2010-11) (FY 2009-10) has received income of Rs.3,95,030/- and TDS of Rs.39,569/- has been deducted and deposited the same in the Government account. Thus, I note that there are two documents before me (i) Form 16A-TDS Certificate and (ii) Form 26AS, [which is downloaded from the Income-tax Department website], which shows that for the same assessment year (AY) two different figures from two sources. The AO has taken the figures from the TDS*

Certificate issued by the said company (M/s. Uni pay) as gospel truth to make the impugned addition. The AO being a quasi judicial authority should be fair while framing the assessment of the assessee under the Act (income-tax). The AO had in his hand also Form 26AS, which reveals that an amount of Rs.3,95,030/- was credited in the assessee's account for this AY (2010-11) (FY 2009-10). TDS amount of Rs.39,569/- has been deducted and deposited in the Government Account. I find that Form 26AS is maintained by the Income-tax Department. In such a scenario, in the interest of justice and since it is second round of assessee's appeal, and keeping in mind that there should be finality of the issue I am deciding as infra. First of all, Form 16A is generated by M/s. Unipay Marketing Pvt. Ltd. which is payer and the assessee who is the payee has no control over it. Even if the amount is paid it should have been accounted for in assessee's bank account, which is not the case of the AO. Simply because there is difference in the claim of assessee in respect of TDS credit and the corresponding income, the AO has made the addition which cannot be accepted when the Form 26AS gives a different picture, which also assessee has no control; and 26AS Forms are generated by the Income-tax department and the figures come close to the assessee's contention. Therefore, I am of the opinion the assessee's income should be taken as Rs.3,95,030/-, which is shown in Form 26AS (downloaded from the Income tax Department website) and she should be given TDS credit of only Rs.39,569/- as reflected in the Form 26AS. I direct the AO to adopt these figures

and compute the taxable income of assessee accordingly as per law."

In this appeal, the above factual position is not being disputed by the revenue. Thus, we are of the clear view that there is no substantial question of law much less substantial question of law arising in this appeal for consideration.

Accordingly, the appeal filed by the revenue (ITAT/233/2022) is dismissed.

Consequently, the connected application for stay (IA No.GA/2/2022) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

As./ S.Das