Form No.(J2)

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

Present :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

A N D

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

IA NO.GA/2/2017
(Old GA/434/2017)
ITAT/46/2017

THE PRINCIPAL COMMISSIONER OF INCOME TAX-4, KOLKATA
-Versus-
M/S. BRIDGE & ROOF CO. (INDIA) LIMITED

For the Appellant: ***Mr. Radhamohan Roy, Adv.***

For the Respondent: ***Mr. J. P. Khaitan, Sr. Adv.***
Mr. Siddhartha Das, Adv.
Ms. Swapna Das, Adv.

Heard on : 06.12.2021

Judgment on : 06.12.2021

T. S. SIVAGANANAM, J. : The appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 18th March, 2016 passed by the Income Tax Appellate Tribunal, Kolkata "B" Bench (the 'Tribunal' in short) in ITA No.1772/Kol/2014 for the assessment year 2010-11.

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

> *"(a) Whether in the facts and circumstances of the case, the assessee claimed depreciation on tools & tackles @20% while including them under the head "Inventories" though no depreciation U/s.32(1) is allowable on inventories which include only goods for purchase and sales?*
>
> *(b) Whether in the facts and circumstances of the case the Judgment and Order passed by the Learned Tribunal are liable to be set aside and the amount of Rs.2,37,83,000/- be added in the total income of the assessee because the assessee did not follow the provision of Section 145A of the Income Tax Act, 1961 relating to the Method of Accounting in certain cases where the valuation of purchase and sale of goods and adjustments of tax duty and cess is dealt which does not provide for depreciation as claimed by the assessee?"*

We have heard Mr. Smarajit Roychowdhury, learned counsel for the appellant/revenue and Mr. J. P. Khaitan, learned senior counsel for the respondent/assessee.

The short issue which falls for consideration is whether the Commissioner of Income Tax Kolkata-IV, was justified in invoking his power under Section 263 of the Act to set aside the order of assessment dated 21st March, 2013 passed by the Assessing Officer under Section 143(3) of the Act. The settled legal position is that to invoke the power under Section 263 of the Act, it is not sufficient that the order should be shown to be erroneous alone but it should be shown to be erroneous and prejudicial to the interest of the revenue. In other words, the power under Section 263 of the Act is not a power to review the order passed by the assessing officer, and merely because the commissioner is of different view, such power cannot be invoked. Bearing this legal principle in mind, we have examined the facts of the case and we find that the reason for interfering with the order passed by the assessing officer was on the ground that the assessing officer did not properly scrutinize the valuation of the closing stock of tools and tackles.

On perusal of the order passed under Section 263 of the Act dated 21st August, 2014, we find that the order is bereft of any particulars. We cannot decipher as to how the Commissioner was of the opinion that he is justified in invoking his power under Section 263 of the Act. Be that as it may, the tribunal on going through the facts of the case found that a specific query was raised by the assessing officer to the assessee with regard to the valuation of closing stock of tools and tackles and the assessee had offered an explanation which found favour with the assessing officer and assessment was completed. This factual position was put to the revenue during the course of argument before the tribunal and the revenue was not able to controvert or revert this factual position which was manifestly clear from the records.

Thus, the tribunal was fully justified in allowing the assessee’s appeal and set aside the order passed by the Commissioner under Section 263 of the Act.

For the above reasons, the appeal (ITAT/46/2017) fails and is dismissed. The substantial questions of law are answered against the revenue.

The connected application for stay (IA No.GA/2/2017, old No.GA/434/2017)) also stands closed.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

A/s./bp