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

IA No.GA 2 of 2021
In
ITA 23 of 2021

THE PRINCIPAL COMMISSIONER OF INCOME TAX 1, KOLKATA
VS
M/S. APEEJAY SHIPPING LTD.

BEFORE:

The Hon'ble JUSTICE T. S. SIVAGNANAM

AND

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 8th December, 2021.

Appearance:

Mr. S.N. Dutta, Adv.

Mr. Asok Bhowmik, Adv.

...for the appellant.

Mr. Abhratosh Majumdar, Adv.

Mr. Avra Mazumder, Adv.

...for the respondent.

The Court : This appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 challenging the composite order dated 20.12.2019 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata in ITA No.714/KOL/2019 for the assessment year 2008-09.

The Revenue has raised the following substantial question of law:

- i) Whether the Income Tax Appellate Tribunal is justified in law to declare the impugned revision assessment order of the Assessing Officer dated 29.01.2016 as non-est and is justified on allowing the appeal of assessee against order u/s 263 in technical ground without justifying the legislative intention of sec 115JB & 115JAA?

We have heard Mr. S.N. Dutta, learned Senior Counsel for the appellant/Revenue and Mr. Abhratosh Majumdar, learned Senior Counsel appearing for the respondent/assessee.

The Revenue had filed ITAT 288 of 2017 against the very same impugned order passed by the Tribunal and by judgment dated 22.11.2021 the appeal was dismissed. The operative portion of the order reads as follows:

"The short question involved in the instant appeal is whether the Commissioner of Income Tax could have exercised his power under Section 263 of the Act and set aside the order passed by the Assessing Officer on 8th December, 2011 under the guise of revising the assessment order dated 29th November, 2012. This aspect of the matter was considered by the Tribunal and the Tribunal has recorded the following findings:

"8. ... It is pertinent to note here that the MAT Credit as per the provisions of section 115JAA was actually allowed by the Assessing Officer originally in the assessment completed under section 143(3) read with section 263 passed on 08.12.2011 and in the appeal filed by the assessee against the said order, the limited issue involved was whether the MAT Credit allowed by the Assessing Officer should include the amount of surcharge and education cess as well. When the 1d. CIT(Appeals) decided the said issue in favour of the assessee vide his appellate order dated 19.12.2012 the order dated 29.11.2012 was passed by the Assessing Officer under section 143(3) read with section 263 and 251 giving effect to the appellate order of the 1d. CIT dated 19.10.2012 and accordingly the MAT Credit originally allowed by him vide order dated 08.12.2011 passed under section 143(3) read with

section 263 on 08.12.2011 was only increased by him by the amount of surcharge and education cess. The error, if any, in allowing the MAT Credit as alleged by the ld. CIT in his impugned order passed under section 263 thus was there in the order passed by the Assessing Officer under section 143(3) read with section 263 on 08.12.2011 whereby the MAT Credit was originally allowed and not in the order dated 29.11.2012 passed by the Assessing Officer under section 143(3) read with section 263 and 251 whereby the MAT Credit already allowed was only increased by the Assessing Officer by the amount of surcharge and education cess while giving effect to the appellate order of the ld. CIT(Appeals)."

We find that the above fact recorded by the Tribunal is just and proper. That apart, we also find that the Tribunal took note of the decision of the Hon'ble Supreme Court in CIT vs. Alagendran Finance Limited [211 CTR (SC) 69] and held that the order passed by the Commissioner of Income Tax under Section 263(2) is hopelessly barred by limitation. The Tribunal rightly held that the period of limitation for the assessment year 2007-08 has to be reckoned from the date of the order passed by the Assessing Officer under Section 143(3) read with Section 263 i.e. 8th December, 2011 and not from the date of the order passed by the Assessing Officer under Section 143(3) read with Section 263 and 251 dated 29th November, 2012. Thus, we find that the Tribunal rightly allowed by the appeal filed by the assessee.

Thus, we find that there is no error in the order passed by the tribunal. Accordingly, the appeal fails and is dismissed. The substantial question of law is answered against the revenue. The stay application also stands closed."

Thus, following the order, the appeal stands dismissed and the substantial question of law is answered against the Revenue.

The application being IA No. GA 2 of 2021 also stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.pal/pkd