OD – 19 & 20

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

IA NO:GA/1/2018 (OLD NO. GA/595/2018)
IN
ITAT/60/2018
PRINCIPAL COMMISSIONER OF INCOME TAX 14, KOLKATA
VS.
BANGIYA GRAMIN VIKASH BANK

IA NO:GA/2/2018 (OLD NO. GA/596/2018)
IN
ITAT/60/2018
PRINCIPAL COMMISSIONER OF INCOME TAX 14, KOLKATA
VS.
BANGIYA GRAMIN VIKASH BANK

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date: November 23, 2021.

[Via video conference]

Appearance :
Mr. Debasis Chowdhury, Adv.
Mr. Radha Mohan Roy, Adv.
… for the appellant

Mr. Abhrotosh Majumder, Adv.
Mr. Soumitra Chowdhury, Adv.
Mr. Avra Majumder, Adv.
..for the respondent

RE: IA NO:GA/1/2018 (OLD NO. GA/595/2018) IN ITAT/60/2018

The Court : Heard Mr. Debasis Chowdhury, learned standing counsel for the appellant and Mr. Majumder, learned counsel for the respondent. We have perused the affidavit filed in support of the petition and we are satisfied with the reasons assigned in the affidavit and the delay in filing the appeal is condoned.

The petition is allowed.

RE: IA NO:GA/2/2018 (OLD NO. GA/596/2018) IN ITAT/60/2018

This appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the Act, in brevity) is directed against the order dated 12th May, 2017 passed by the Income Tax Appellate Tribunal 'C' Bench, Kolkata in ITA No.877/Kol/2015 for the Assessment Year 2010-11. The Revenue has raised the following substantial question of law for our consideration:

a. Whether on the facts and the circumstances of the case, the Learned Income Tax Appellate Tribunal, "C" Bench, Kolkata, was justified in law or in fact in holding that the assessing officer had made due enquiries on the assessment of deduction of the sum of Rs.25,57,00,000/- on account of arrear payment which are payable consequent to wage revision and that it was an ascertained liability and was liable to be allowed as deduction?

We have heard Mr. Debasis Chowdhury, learned counsel for the appellant and Mr. Majumder, learned counsel for the respondent/assessee. The short issue which falls for consideration is whether the exercise of jurisdiction by the Commissioner of Income

Tax-14 (Kolkata) (CIT) under Section 263 of the Act was just and proper. The Tribunal considered the factual position and noted that the CIT was of the opinion that the order of the Assessing Officer dated 18th March, 2013 was erroneous and prejudicial to the interest of Revenue and certain reasons were assigned thereto. The matter concerns the provision and contingencies of Rs.25,57,00,000/- on account of arrear payment due to wage revision. Noting the same fact, a show-cause notice was issued to the assessee by the CIT dated 14th July, 2011 and the assessee submitted their reply and upon considering the reply, the Tribunal was of the view that the assumption of jurisdiction by the CIT under Section 263 of the Act was incorrect. The Tribunal noted that consequent to the decision of the Hon'ble Supreme Court in Civil Appeal No.2218/1999 in the case of *South Malabar Gramin Bank versus Co-ordination Committee*, it was held that there should be parity between the employees of the commercial banks and the employees of the regional rural banks that as and when the pay structure of the employees of the nationalised banks got revised on the basis of any bipartite settlement, the Union Government should take a decision so far as the employees of the regional rural banks are concerned, within a reasonable time so that the parity could be maintained. Apart from placing reliance on the aforesaid decision, the assessee also places reliance on the decision of the Hon'ble Supreme Court in *Malabar Industries Limited 243 ITR 83* that the Revenue was heard and the Tribunal after taking note of the factual position and the decision of the Hon'ble Supreme Court had recorded a finding of fact that the assessing officer while completing the assessment has made due enquiries on the aspect of provision for arrears of wages consequent to wage revision and after making due enquiries, the assessment was completed. Therefore, the Tribunal on facts came to the conclusion that the action of the assessing officer in allowing the claim of the assessee for deduction cannot be said to be erroneous as it was a possible view which the assessing officer has taken and merely because the CIT does not agree with the view expressed by the assessing officer, he could not invoke his jurisdiction under Section 263 of the Act. On facts, we have found that there is nothing to interfere with the order passed by the Tribunal.

Learned counsel appearing for the respondent/assessee places reliance on a decision in the case of *Commissioner of Income Tax, Ward-3, Tirunelveli versus Smt. Padmavathi* [2020]120 taxmann.com 187 (Madras). In the said decision it was held that the Commissioner while invoking his power under Section 263 faults the assessing officer on the ground that he did not make proper enquiry and in the absence of any clarity as to why in the opinion of the Commissioner the enquiry was not proper, invocation of power under Section 263 was not justified.

In our considered view, the said decision will apply with full force to the case on hand. We say so because the Tribunal on examining the facts found that there was no error in the manner in which the assessment was completed and no fault can be attributed to the assessing officer as to how the enquiry was conducted. Thus, we find that the order passed by the Tribunal does not call for any interference. In the result, the appeal fails and the same stands dismissed and the substantial question of law is answered against the Revenue.

The connected stay application also stands closed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

RS/bp