OD-18

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

IA No.GA 2 of 2021
In
ITAT 107 of 2021

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
Vs.
NIPHA EXPORTS PVT. LTD.

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 8th December, 2021.

Appearance:
Mr. P. K. Bhowmik, Adv.
Mr. Manabendra Nath Bandopadhyay, Adv.
…for the appellant.

Mr. Pratyush Jhunjhunwala, Adv.
Mr. Sanjay Ginodia, Adv.
Ms. Mini Agarwal, Adv.
…for the respondent.

The Court : This appeal of the revenue filed under Section 260A of the Income Tax Act (the 'Act' in brevity) is directed against the order dated 17th January, 2020 passed by the Income Tax Appellate Tribunal, B-Bench, Kolkata (the 'Tribunal') in ITA No.873/Kol/2018 for the assessment year 2013-14.

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

i) *Whether on the facts and circumstances of the case and on law, the learned Income Tax Appellate Tribunal was justified in granting relief, in respect of 'VAT' refund receivable amounting to Rs.30,19,963/- without* *appreciating the case on merit and observation made by C.I.T. in his order under Section 263 of the Income Tax Act, 1961* ?

We have heard Mr. P. K. Bhowmik, learned Standing Counsel assisted by Mr. Manabendra Nath Bandopadhyay, learned Junior Standing Counsel appearing for the appellant/revenue and Mr. Pratyush Jhunjhunwala, learned Counsel assisted by Ms. Mini Agarwal, learned Counsel appearing for the respondent/assessee.

The short question involved in the instant case is whether the Principal Commissioner of Income Tax-1, Kolkata was justified in invoking his power under Section 263 of the Act on the ground that the order of assessment order 15th July, 2015 under Section 143(3) of the Act was erroneous and prejudicial to the interest of the revenue. The issue concerns VAT refund receivable by the respondent assessee. The PCIT was of the view that the Assessing Officer did not enquire into the matter and, therefore, sought to justify his action under Section 263 of the Act. The Tribunal tested the validity of the order and took note of the fact that the Assessing Officer had specifically raised this issue during the course of assessment and issued a notice to the assessee and conducted an enquiry under Section 142(1) by intimating the assessee vide letter dated 6th July, 2015 and the assessee submitted its explanation by a letter dated 10th July, 2015 along with a copy of the relevant details and after examining the explanation, the assessment was completed. This factual position was taken note by the Tribunal and found that there is no question of excercising jurisdiction under Section 263 of the Act. Thus, we find that there is no question of law much less substantial question of law arising for consideration in this appeal.

In the result, the appeal fails and the same stands dismissed.

The stay application is also dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

pa/S.Das