Serial No. OD-3

HIGH COURT AT CALCUTTA
(Original Side)

ITAT No.190 of 2017
IA No.GA 2/2017
(Old No.GA 1682/2017)
(Through Video Conferencing)

PRINCIPAL COMMISSIONER OF INCOME TAX-3, KOLKATA
… .Appellant(s)

Through : Mr. Debasish Choudhury,
Mr. Soumen Bhattacharya, Advocates

v/s

M/s BRITANNIA INDUSTRIES LTD.
….Respondent(s)

Through : Mr. R.K. Murarka,
Ms. Sutapa Roychowdhury, Advocates

Coram : HON'BLE MR. JUSTICE RAJESH BINDAL,
CHIEF JUSTICE (ACTING)

HON'BLE MR. JUSTICE RAJARSHI BHARADWAJ,
JUDGE

O R D E R

1. The revenue is in appeal before this Court against the order dated September 02, 2016 passed by the Income Tax Appellate Tribunal, "D" Bench, Kolkata for the Assessment Years 2008-09 in I.T.A. No.780/Kol/2013. The following substantial questions of law are sought to be raised:

> "(A) Whether the in the facts and circumstances, learned Income Tax Appellate Tribunal erred in law and in fact in quashing the order of the Commissioner of Income Tax-III, Kolkata passed under Section

263 of the Income Tax Act, 1961 stating that the Commissioner of Income Tax-III cannot invoke jurisdiction under Section 263 of the Income Tax Act, 1961 just because he does not agree with the view of the assessing officer?

(B) Whether the learned Income Tax Appellate Tribunal erred in law and on the facts in deleting the disallowance under Section 14A of the Income Tax Act, 1961 amounting to Rs.2,00,09,437/- computed as per provisions made under Section 14A of the Income Tax Act, 1961 read with Rule 8D of the Income Tax Rules, 1962?"

2. The learned Counsel for the Revenue submitted that error was committed during the course of assessment proceedings while carrying out calculations. The Revisional Authority vide order dated January 30, 2013 set aside the order passed by the Assessing Officer finding that to be prejudicial to the interest of revenue. He had directed for correction of those errors and remitted the matter back to the Assessing Officer for the purpose. No grievance should have been raised by the assessee. All the assessees should always volunteer to pay legitimate amount of taxes due from them.

3. On the other hand, learned Counsel for the assessee submitted that the assessment for the year in question was framed by the Assessing Officer vide order dated December 24, 2010. The matter was taken up by the Commissioner of Income Tax under Section 263 of the Act. Vide order dated January 30, 2013, the matter was remitted back to the Assessing Officer for recomputation of the disallowance as per Rule 8D of the Income Tax Rules, 1962. The aforesaid order was challenged by the assessee by filing appeal before the Tribunal. The Tribunal vide order dated March 02, 2016 passed in ITA No.390/Kol/2013 accepted the aforesaid appeal and set aside the order dated March 30, 2013 passed by the Commissioner under section 263 of the Act. The aforesaid order

passed by the Tribunal was challenged by the Revenue by filing ITAT No.45 of 2017 in this Court. The appeal was dismissed vide order dated July 19, 2018.

4. In view of the aforesaid factual matrix, the argument raised is that the order passed by the Commissioner under section 263 of the Act having been set aside, the Assessing Officer, who was directed to pass consequential order, lost jurisdiction to take up the matter. In the present proceedings challenge is to the consequential order passed by the Assessing Officer. The Assessee succeeded before the Tribunal whereby it had set aside the order passed by the authorities below holding that the Tribunal having already set aside the order passed under section 263 of the Act, further order passed by the Assessing Officer in pursuance thereto was non-est.

5. After hearing the learned Counsel for the parties, we find that at this stage the present appeal is totally misconceived. The facts of the case can be noticed briefly in the following table.

Date	Events
December 24, 2010	Assessment of the respondent was framed under section 143(3) of the Act.
January 30, 2013	The matter was taken up by the Commissioner of Income Tax under Section 263 of the Act. The Assessing Officer was directed to recompute the exemptions as per Rule 8D of the Income Tax Rules, 1962 as the earlier order passed by the Assessing Officer was found to be prejudicial to the interest of revenue.

March 20, 2014	In pursuance to the direction issued by the Commissioner of Income Tax vide order passed under section 263 of the Act, consequential order was passed by the Assessing Officer.
March 20, 2015	Appeal filed by the Assessee against the consequential order passed by the Assessing Officer was partly allowed by the CIT(A)-3.
March 02, 2016	Appeal filed by the Assessee against the order dated January 30, 2013 passed by the CIT under section 263 of the Act was accepted by the Tribunal while setting aside the order Janaury 30, 2013. The aforesaid order was challenged by the Revenue by filing ITAT No.45 of 2017 before this Court.
September 02, 2016	Appeal filed by the Assessee against the order dated March 20, 2015 was allowed by the Tribunal noticing the fact that the order dated January 30, 2013 passed by the CIT under section 263 had already been set aside by the Tribunal vide order dated March 02, 2016. Hence, the consequential order passed by the Assessing Officer will become non-est. The present appeal was filed by the Revenue against the aforesaid order in this Court in March 2017. In para 7 of the grounds of appeal it has been specifically mentioned that the

	Revenue having challenged the order dated March 02, 2016 passed by the Tribunal, setting aside the order passed under section 263 of the Act before this Court, the present appeal is being filed as the Tribunal had set aside the consequential order on the basis thereof.
July, 19, 2018	The appeal filed by the Revenue bearing ITAT No. 45 of 2017 against the order dated March 02, 2016 passed by the Tribunal, setting aside the order passed by the CIT under section 263 of the Act, was dismissed.

6. In view of the aforesaid factual matrix it remains undisputed that the order passed by the CIT under section 263 of the Act was set aside by the Tribunal and the same was upheld by this Court in ITAT 45 of 2017 vide order dated July 19, 2018. There was no occasion for the Revenue to raise any argument in the present appeal. The challenge in the present appeal by the Revenue is to the order passed by the Tribunal whereby the consequential order of assessment passed by the Assessing Officer in terms of directions issued by the CIT in its order passed under section 263 of the Act, was set aside.

7. For the reasons mentioned above, we do not find any substantial question of law arises in the present appeal. The same is accordingly dismissed. As the appeal was sought to be pressed despite aforesaid factual matrix, the appellant is burdened with cost of ₹25,000/-. The same shall be deposited with the West Bengal State Legal Services Authority upto November 30, 2021.

8. A copy of the order be sent to the Member Secretary, West Bengal State Legal Services Authority to enable him to apprise the Registrar General of this Court in case the amount of cost is not deposited within the period granted so that the matter may be listed in Court for further direction.

(RAJESH BINDAL)
CHIEF JUSTICE, ACTING

(RAJARSHI BHARADWAJ)
JUDGE

KOLKATA
11.08.2021
PA(SG)