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

IA No.GA 2 of 2017 (Old No. GA 2018 of 2017)
In
ITAT 229 of 2017

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA 8
VS
M/S. PRICE WATER HOUSE

BEFORE:

The Hon'ble JUSTICE T. S. SIVAGNANAM

AND

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 10th December, 2021.

Appearance:

Ms. Sucharita Biswas, Adv.

Mr. Arunava Ganguly, Adv.

...for the appellant.

Mr. J.P. Khaitan, Sr. Adv.

Mr. Indranil Nandi, Adv.

Mr. Sayak Konar, Adv.

...for the respondent.

The Court : This appeal has been filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the Act, in brevity) and is directed against the order dated 11.05.2016 passed by the Income Tax Appellate Tribunal, "D" Bench, Kolkata in ITA No.1277/KOL/2014 for the assessment year 2009-10.

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

- a) Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal, 'D' Bench, Kolkata erred in quashing the order under Section 263 of the Act on the basis that the order of the assessing officer sought to be revised in the impugned order was neither

erroneous nor prejudicial to the interest of revenue for the reason of any law of enquiry that the assessing officer ought to have made in the given facts and circumstances of the case?

- b) Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal, 'D' Bench, Kolkata was justified in not relying on the objection raised by the revenue audit that accountant risked policy premium of Rs.1,71,40,899/- debited in profit & loss account should have been disallowed and a sum of Rs.3,34,56,529/- debited in profit and loss account as PWC Global Services charges is not allowable as the PWC Global Service has no direct or indirect nexus in running or functioning of the respondent/assessee's business and also raised objection of incorrect computation of partners' salary under Section 40(b) of the Income Tax Act, 1961. The respondent/assessee has credited a sum of Rs.10,35,13,136/- as sundry income. Whether for the purpose of computation of partners' salary allowable under Section 40(b) of said receipt being income from other sources should be excluded from the book profit?

We have heard Ms. Sucharita Biswas, learned standing Counsel appearing for the appellant/Revenue and Mr. J.P. Khaitan, learned Senior Counsel for the respondent/assessee.

The order impugned before the Tribunal was passed by the Commissioner of Income Tax, Kolkata XIX, Kolkata (CIT) dated 28.03.2014 in exercise of his power under Section 263 of the Act. The respondent/assessee filed its return of income for the assessment year 2009-10 declaring a total income of

Rs.35,20,57,152/-. Subsequently, revised return was filed declaring a total income of Rs.35,95,93,663/-. The case was selected for scrutiny and thereafter the assessment was completed under Section 143[3] of the Act by order dated 28.12.2011 on total income of Rs.36,03,42,760/-. The CIT took up the matter for consideration and on scrutiny pointed out that the assessee had credited a sum of Rs.10,35,13,136/- as sundry income in the profit and loss account and for the purpose of computation of partner's salary allowable under Section 40[b] of the Act. The said income being income from other sources should be excluded from the book profit. This, according to the CIT, was a mistake. Secondly, the CIT noted that the assessee has debited a sum of Rs.3,34,56,529/- in profit and loss account on PWC Global Service charges and the same is not allowable as it has no direct or indirect nexus in running and functioning of business of the assessee and, therefore, the amount should be disallowed. Particularly, the CIT stated that the assessee has debited a sum of Rs.1,71,40,899/- in the profit and loss account towards accountant risked policy premium as business expenditure incurred by the assessee on account of the said risked policy premium cannot be considered admissible under section 37[1] of the Act. On the third ground, the CIT was of the view that the Assessing Officer has failed to take note of the mistake and the failure on the part of the Assessing Officer to examine this point has made the assessment erroneous and prejudicial to the interest of revenue. Accordingly, notice under Section 263 of the Act was issued on 06.03.2014 to the assessee and after hearing the submissions of the assessee and the revenue the CIT passed the order dated 28.03.2014 holding that the order of assessment was erroneous and prejudicial to the interest of revenue and directed the Assessing Officer to examine all issues.

Aggrieved by the same, the assessee preferred the appeal before the Tribunal. The assessee's case was that inquiry was conducted by the Assessing Officer before completing the assessment and it is incorrect to state that no inquiry was done, in fact, sufficient material was placed before the Assessing Officer during the course of assessment proceeding which was a scrutiny assessment and, thereafter, only the assessment was made and the CIT has not stated as to and in what manner the Assessing Officer has committed an error so as to form the opinion that the order of assessment is erroneous and prejudicial to the interest of revenue. It is contended that merely by stating that no inquiry had been conducted by the Assessing Officer would not be sufficient to hold that the assessment order to be erroneous and prejudicial to the interest of revenue. Various factual submissions were also made before the Tribunal and materials were placed to show that at least in four earlier assessment years the sum of the claims made by the assessee was allowed and there is no circumstances warranting the Assessing Officer to take a different view and, hence, the order passed by the CIT was unsustainable. The Tribunal decided the argument for its scrutiny after hearing the revenue. The Tribunal after examining the benefits found that detailed submissions and materials were available on record with regard to the sundry income credited in the profit and loss account and the Assessing Officer has secured the required details and has not made any adverse observation in its order. Therefore, the Tribunal concluded that the Assessing Officer was satisfied that the income in question had direct nexus with the business of the assessee and, therefore, had to be regarded as income from business. Furthermore, the Tribunal found that it is not disputed that income from sale of scrap, foreign exchange fluctuation gain are inextricably linked to the

professional income and have to be regarded as income from profession. With regard to the payment of service charges to M/s. Price Water House Coopers, the required details were filed by the assessee and looked into by the Assessing Officer, who has raised the specific queries on those charges. Therefore, the Tribunal was satisfied that necessary inquiries were made by the Assessing Officer. Furthermore, the Tribunal specifically noted that similar charges have been allowed as a direction in the earlier years and, hence, there was no reason for the Assessing Officer to doubt the nexus of those expenses with the business of the assessee. With regard to payment of policy premium to cover risk damages owing to professional negligence, the Tribunal held that it has direct nexus to the business of the assessee. In this regard, the Tribunal has noted the submissions of the assessee that similar expenditure had been allowed during the assessment years 2005-06 to 2008-09. Therefore, the Tribunal was satisfied that necessary inquiries were made and the order passed by the Assessing Officer cannot be treated to be erroneous nor prejudicial to the interest of revenue. That apart, the Tribunal also held that merely by stating that there is no inquiry by the Assessing Officer would not be sufficient for the CIT to assume jurisdiction under Section 263 of the Act but a finding has to be rendered as to how and in what manner the inquiry was required to be done which the Assessing Officer had failed to do. With regard to the payment of service charges to Price Water House Coopers services the Tribunal noted that the assessee vide letter dated 25.3.2014 had given the proper explanation which found place in the paper book filed, which were the materials already available on record. Thus, the Tribunal was satisfied on facts that the Assessing Officer has inquired into the matter to the extent required the documents were available with the Assessing Officer and, accordingly, held that

the assessment order cannot be treated to be erroneous or prejudicial to the interest of revenue. We find no error in the manner in which the Tribunal has considered the fact position and arrived at a conclusion warranting any interference at our hands.

Accordingly, the appeal is dismissed and the substantial questions of law are answered against the revenue.

The application, IA No.GA 2 of 2017 (Old No. GA 2018 of 2017) also stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)