OD-11

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

IA No.GA 2 of 2017 (Old No.GA 2639 of 2017)
In
ITAT 283 of 2017

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-5, KOLKATA
Vs.
BAJAJ PARIVAHAN PRIVATE LIMITED

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 14th December, 2021.

Appearance:
Mr. P.K. Bhowmik, Adv.
...for the appellant.

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act (the 'Act' in brevity) is directed against the order dated 21st October, 2016 passed by the Income Tax Appellate Tribunal, D-Bench, Kolkata (the 'Tribunal') in ITA Nos.1107/Kol/2016 for the Assessment Year 2011-12.

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

i) *Whether on the facts and the circumstances of the case the Tribunal was justified in law in quashing the order under Section 263 of the Income Tax Act, 1961 holding that the Assessing Officer has rightly adopted @1% of disallowance of such expenses on estimation basis when basis of such meager estimation was not prima facie clear from the material on record and its purported findings in this regard are arbitrary, unreasonable and perverse ?*

ii) *Whether the Tribunal was justified in not appreciating that failure on the part of the Assessing Officer to examine in depth the claim of the assessee and his failure to do so is not only erroneous but also prejudicial to the interest of the revenue, which causes loss of revenue, and thus attracts Section 263 of the Income Tax Act, 1961 and its purported findings in this regard are arbitrary, unreasonable and perverse?*

iii) *Whether the Tribunal erred in law is not appreciating that the instant case falls within the four corners of the clause (a) and (b) of the Explanation 2 appended to Section 263 of the Income Tax Act, 1961?*

We have heard Mr. P. K. Bhowmik, learned standing Counsel appearing for the appellant/revenue.

The issue involved in the instant appeal is whether the assumption of jurisdiction by the Commissioner of Income Tax (Appeals) under Section 263 was valid though the revenue has raised three questions of law. The sum and substance of the issue is whether the exercise of power under Section 263 was sustainable. The Tribunal has considered the factual position which was examined by the Assessing Officer and noted that the details of particulars of payments made on account of warehouse expenses, commissions and claims were furnished to the Assessing Officer and on perusal of the same, the Assessing Officer found that the assessee had submitted party wise details of payments, vehicle number, amount credited and TDS were deducted on such claims. Furthermore, the Tribunal noted that these details were furnished to the Assessing Officer after a notice under Section 143(2) was issued to the assessee calling upon the assessee to produce the accounts and documents and furnish a reply in writing. Thus, the Tribunal concluded that the assumption of jurisdiction under Section 263 was clearly erroneous. 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 connected application also stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/pa