OD-41

ITAT/288/2017
IA No.GA/2/2017 (Old No.GA/2672/2017)

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

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-3, KOLKATA

-Versus-

M/S. APEEJAY SHIPPING LIMITED

Appearance:
Mr. P. K. Bhowmick, Adv.
Mr. M. N. Bandopadhyay, Adv.
...for the appellant.

Mr. Abhrotosh Majumdar, Sr. Adv.
Mr. Avra Majumdar, Sr. Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 22nd November, 2021.

The Court : This appeal of revenue filed under Section 260A of the Income Tax Act (the 'Act' in brevity) is directed against the order dated 6th April, 2016 passed by the Income Tax Appellate Tribunal, A-Bench, Kolkata (the 'Tribunal') in ITA Nos.781, 782, 783 & 784/Kol/2015 for the assessment years 2007-08, 2008-09, 2009-10 and 2010-11.

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 Tribunal was justified in law in allowing the appeal of the assessee against the order passed under Section 263 on technical ground without justifying the legislative intent of Section 115 JB and 115 JAA of the Income Tax Act?

We have heard Mr. P.K. Bhowmick, learned counsel for the appellant/revenue and Mr. Majumdar, learned senior counsel for the respondent/assessee.

The short question involved in the instant appeal is whether the Commissioner of Income Tax could have exercised his power under Section 263 of the Act and set aside the order passed by the Assessing Officer on 8th December, 2011 under the guise of revising the assessment order dated 29th November, 2012. This aspect of the matter was considered by the Tribunal and the Tribunal has recorded the following findings:

"8. ... It is pertinent to note here that the MAT Credit as per the provisions of section 115JAA was actually allowed by the Assessing Officer originally in the assessment completed under section 143(3) read with section 263 passed on 08.12.2011 and in the appeal filed by the assessee against the said order, the limited issue involved was whether the MAT Credit allowed by the Assessing Officer should include the amount of surcharge and education cess as well. When the ld. CIT(Appeals)

decided the said issue in favour of the assessee vide his appellate order dated 19.12.2012 the order dated 29.11.2012 was passed by the Assessing Officer under section 143(3) read with section 263 and 251 giving effect to the appellate order of the ld. CIT dated 19.10.2012 and accordingly the MAT Credit originally allowed by him vide order dated 08.12.2011 passed under section 143(3) read with section 263 on 08.12.2011 was only increased by him by the amount of surcharge and education cess. The error, if any, in allowing the MAT Credit as alleged by the ld. CIT in his impugned order passed under section 263 thus was there in the order passed by the Assessing Officer under section 143(3) read with section 263 on 08.12.2011 whereby the MAT Credit was originally allowed and not in the order dated 29.11.2012 passed by the Assessing Officer under section 143(3) read with section 263 and 251 whereby the MAT Credit already allowed was only increased by the Assessing Officer by the amount of surcharge and education cess while giving effect to the appellate order of the ld. CIT(Appeals).”

We find that the above fact recorded by the Tribunal is just and proper. That apart, we also find that the Tribunal took note of the decision of the Hon’ble Supreme Court in CIT vs. Alagendran Finance Limited [211 CTR (SC) 69] and held that the order passed by the Commissioner of Income Tax under Section 263(2) is hopelessly barred by limitation. The Tribunal rightly held that the period of limitation for the assessment year 2007-08 has to be reckoned from the date of the order passed by the

Assessing Officer under Section 143(3)read with Section 263 i.e. 8th December, 2011 and not from the date of the order passed by the Assessing Officer under Section 143(3) read with Section 263 and 251 dated 29th November, 2012. Thus, we find that the Tribunal rightly allowed by the appeal filed by the assessee.

Thus, we find that there is no error in the order passed by the tribunal. Accordingly, the appeal fails and is dismissed. The substantial question of law is answered against the revenue. The stay application also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./S.Das.