ORDER SHEET

OD-5

WPO No.1160 of 2021
IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
ORIGINAL SIDE

DILIP KUMAR AGARWAL
Versus
PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-11 & ORS.

BEFORE:
The Hon'ble JUSTICE MD. NIZAMUDDIN
Date : 6th December, 2021.

APPEARANCE:
Mr. Rano Jain, Adv.
Mr. Venketesh Chaurasia, Adv.
Mr. Siddhartha Das, Adv.
Ms. Swapna Das, Adv.
For petitioner.

Mr. Tilak Mitra, Adv.
...for respondents.

The Court: Heard learned advocates appearing for the parties.

In this matter, the petitioner has challenged the impugned order dated 20th March, 2020 passed by the Principal Commissioner of Income Tax under Section 264 of the Income Tax Act, 1961 who has passed a detailed and reasoned order and after giving an opportunity of hearing to the writ petitioner, as appears from the writ petition as annexure-P-1. The petitioner had filed the revision application under Section 264 of the Income Tax Act against the assessment order dated 27th December, 2017 under Section 148 of the Income Tax Act, 1961 raising a demand of Rs.9,77,34,760/- which was an appealable order but the petitioner had chosen to file revision under Section 264 of the Act. I find from the impugned order under Section 264 of the Act that the aforesaid assessment order and demand in the assessment order has been upheld by the Principal Commissioner of Income Tax by recording the facts in detail in its order and concluding part of the said order is recorded hereunder:

> *"As discussed above, the assessee did not disclosed the deposits in his bank accounts in the original return filed on 08/03/2011 and also in the return of income filed on 05/06/2017 in response to the notice u/s 148 of the I. T. Act. Further, he has admitted during the proceedings u/s 264 that the sales figure of Rs.11,98,565/- declared in his return of income are imaginary and not real. In other words, he has concealed the deposits in five bank accounts. As per the original return of income for the year under consideration, the assessee is maintaining his books of accounts on mercantile basis (please see 1 of Part A – 01 of the return of income). In his original return of income filed on 08/03/2011, the assessee has written in the relevant column of return of Income that he is liable to maintain his accounts as per section 44AA of the I.T.Act whereas he has submitted during the proceedings u/s 264 that he is not maintaining the books of account as stated in Para 9 of the assessee's submissions dated 03/03/2020. The assessee is also not producing any bank statements except the copies provided by the A.O. to him during the assessment proceedings. He has claimed that the said bank accounts are closed, and he has no documents relating to these five bank accounts. Further, he is not in position to obtain the said bank account statements as they are now old. The A.O. had also tried to obtain the bank account statements, but he did not pursue the matter as indicated in his assessment order. But the facts remain that the above mentioned deposits in his bank accounts are not in dispute. It appears that the assessee is deliberately not furnishing the details of the so-called buyers, suppliers and supporting documents thereof. The assessee has also not explained the sources of various deposits in his five bank accounts with supporting documentary evidences.*

In the facts and circumstances of the case, I am of the considered view that the addition of Rs.9,73,66,727/- made by the AO as unexplained cash credit u/s 68 of the Income Tax Act in his assessment order appears to be in order. Therefore, I hereby decline to interfere with the said assessment order of the Assessing Officer."

In view of the detailed reasons recorded in impugned order confirming the order of assessment and demand, this Court, sitting in constitutional writ jurisdiction under Article 226 of the Constitution of India should not substitute its own finding with the finding of the Commissioner under Section 264 of the Act by acting as an appellate authority over the same, more so, when the impugned order of the Commissioner under Section 264 of the Act is a speaking order and after giving an opportunity of hearing and it is not a case of violation of principles of natural justice or the case of inherent lack of jurisdiction on the part of the authority who has passed such order it will not be proper on the part of Writ Court to interfere in such type of cases.

In view of the discussion made above, this writ petition being WPO/1160/2021 is dismissed.

(MD. NIZAMUDDIN, J.)

sb/