

**IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE**

PRESENT:

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

IA NO: GA/2/2021

in

ITAT/11/2021

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL, KOLKATA-2

VERSUS

M/S. SUPRABHA INDUSTRIES LIMITED

*For the appellant: Mr. P. K. Bhowmick, Adv.,
Mr. Soumen Bhattacharjee, Adv.*

*For the respondent: Mr. Anil Kumar Dugar, Adv.,
Mr. Rajarshi Chatterjee, Adv.*

Heard on : January 18, 2022.

Judgement on : January 18, 2022.

T.S. SIVAGNANAM, J. : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 [the Act, in brevity] is directed against the order dated 03.05.2019 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata [the Tribunal] in ITA no.541/Kol/2018 for the assessment year 2012-13.

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

- a. Whether the learned Tribunal has committed substantial error in law in setting aside the order passed by Pr. CIT, Central-2, Kolkata under section 263 of the Income Tax Act, 1961 holding that section 2[22][e] was not applicable to the loan amounts in question received by the assessee during the year under consideration from other group companies ?
- b. Whether the learned Tribunal has committed substantial error in law in setting aside the order passed by Pr. CIT, Central-2, Kolkata under section 263 of the Income Tax Act, 1961 completely ignoring the facts that the Assessing Officer in original assessment order passed under section 153A/143[3] of the Income Tax Act, 1961, erroneously not added income being deemed dividend under section 2[22][e] of Income Tax Act, 1961 chargeable to tax without making any enquiry and verification whatsoever which rendered the assessment order erroneous so as to be prejudicial to the interest of the revenue ?
- c. Whether the learned Tribunal has committed substantial error in law in setting aside the order passed by Pr. CIT, Central-2, Kolkata under section 263 of the Income Tax Act, 1961 on account of its purported finding that the Assessing Officer has not only made the enquiry or verification as required but a conscious decision was taken by him that section 2[22][e] of the Income Tax Act, 1961 is not applicable

to the loan transaction which is arbitrarily, unreasonable and perverse ?

We have heard Mr. P. K. Bhowmick, learned senior standing counsel appearing for the appellant and Mr. Dugar, learned counsel appearing for the respondent/assessee.

Two issues arise for consideration. Firstly, whether the Principal Commissioner of Income Tax, Central-2, Kolkata [PCIT] was justified in invoking his power under Section 263 of the Act and setting aside the order of assessment passed by the Assessing Officer under section 153A read with Section 143(3) dated 30.03.2016. The second issue is whether Section 2(22)(e) of the Act could have been invoked by the PCIT and directed the Assessing Officer to re-do the assessment by applying the said provision and cause necessary examination of the issue and re-computed the assessee's income. So far as the second issue is concerned, on going through the order passed by the Tribunal, we find that the revenue has not disputed the legal position that Section 2(22)(e) of the Act would be wholly inapplicable in the loan transaction and the question of deemed dividend arising therefrom does not arise, specially when on facts the assessee's case was that a sum of Rs.40 lakhs was availed as an unsecured loan and the interest was also paid. In paragraph 7 of the impugned order the Tribunal recorded the stand taken by the revenue accepting the legal position. However, the argument of the revenue was that the Assessing Officer while completing the assessment did not take note of the legal position in a proper manner and no enquiry

was conducted. This argument was rejected by the Tribunal. We find on facts that the relevant documentary evidence was called for by the Assessing Officer during the course of assessment proceeding and the same were furnished by the assessee. The details of shareholders holding more than 10% shares in the assessee-company was also called for by the Assessing Officer, which was furnished by the assessee. In the tax audit report filed by the assessee along with the return of income, the unsecured loan of Rs.40 lakhs received by the assessee during the year under consideration from M/s. Vijayshree Industries Pvt. Ltd. and squared off in the year itself was recorded and even interest paid thereon was shown in the tax audit report in the details of payments made to related persons as specified under Section 40A(2)(b). Thus, the assessee was able to demonstrate before the Tribunal that all relevant records were available in the file of the Assessing Officer and he rightly applied the legal position and granted relief to the assessee. These aspects were examined by the Tribunal and it was found that there was no justification for invoking the power under Section 263 of the Act. Furthermore, the Tribunal noted that the Assessing Officer has taken a conscious decision bearing in mind the legal position that section 2(22)(e) of the Act was not applicable to the loan amount of Rs.40 lakhs received by the assessee. Thus, we find that the Tribunal rightly allowed the appeal filed by the assessee and granted relief. The said decision of the Tribunal, therefore, does not call for any interference. In the result, the appeal filed by the revenue is dismissed and the substantial questions of law are answered

against the revenue. The application, IA No.GA/2/2021 for stay also stands dismissed.

No costs.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

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AR(CR)