O-145

ITA/129/2019

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

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-11, KOLKATA

-Versus-

M/S. ESTATE OF LATE LAI YUN HSAIN LIU, AOP

Appearance:
Mr. Aryak Dutt, Adv.
...for the appellant.

Mr. Malay Dhar, Adv.
. . for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE SUPRATIM BHATTACHARYA

Date : 26th September, 2022.

The Court: This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 29th November, 2017 passed by the Income Tax Appellate Tribunal, "D" Bench, Kolkata (the Tribunal) in ITA No.984/Kol/2018 for the assessment year 2009-10.

The appeal was admitted on the following substantial questions of law:

i) *Whether on the facts and in the circumstances of the case, the tribunal has properly appreciated the purport and scope of section 147 of the Income Tax Act, 1961 ?*

ii) *Whether on the facts and in the circumstances of the case, the tribunal was justified in holding that the reopening of assessment under section 147 of the Income Tax Act, 1961 was not valid ?*

We have heard Mr. Aryak Dutt, learned standing counsel appearing for the appellant/revenue and Mr. Malay Dhar, learned advocate for the respondent/assessment.

The leading issue involved in the instant case is whether there were any assessment or re-assessment proceedings pending at the relevant point of time when the assessing officer referred the valuation aspect to the District Valuation Officer (DVO). It is not disputed by the revenue that on the date of reference to the DVO there was no assessment or reassessment proceedings pending. If such be the case, the reference is bad in law. The learned tribunal had rightly noted the decision of this Court in *Kajaria Investments & Properties (P.) Ltd. vs. ITO* reported in 250 ITR 619 (Cal.). Further, the decision in the case of *Commissioner of Income Tax vs. Umiya Co-op. Housing Society Ltd.* reported in (2009) 314 ITR 272 (Guj.) also lays down the same principle. The learned tribunal rightly took note of the legal position and dismissed the appeal filed by the revenue.

Thus, we find that the order passed by the learned tribunal does not call for any interference. Accordingly, the appeal (ITA/129/2019) is dismissed and the substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

A/s./S.Das.