OD-17

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

ITAT/63/2017
IA NO: GA/2/2017 (Old No:GA/624/2017)
PRINCIPAL COMMISSIONER OF INCOME TAX - 11, KOLKATA
VERSUS
M/S. NOPANY & SONS

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 12th April, 2022

Appearance :-

Mr. Prithu Dudhoria, Adv.
... For Appellant

Mr. Ananda Sen, Adv.
... For Respondent

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 15th June, 2016 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA No.1258/Kol/2012 for the assessment year 2004-05. The revenue has raised the following substantial questions of law for consideration :

> "Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal, "B" Bench, Kolkata erred in law by dismissing revenue appeal and allowed relief to the respondent/assessee, which was contrary to all the facts and circumstances of the case as well as against law ?"

We have heard Mr. Prithu Dudhoria, learned Standing Counsel appearing for the appellant/revenue and Mr. Ananda Sen, learned Counsel appearing for the respondent/assessee.

The Tribunal by the impugned order held that reopening of the assessment for the relevant assessment year under Section 147 of the Act to be bad in law. So far as the order passed by the Commissioner of Income Tax (Appeals), Central –1, Kolkata [CIT(A)] dated 14th June, 2012, the assessee was granted relief by considering the merits of the matter. Before the Tribunal the revenue was in appeal and the revenue as well as the respondent agreed that they will first argue on the question of validity of the reopening of the assessment. The assessee contended that the reopening of the assessment was a case of mere change of opinion and placed reliance on the decision of the Hon'ble Supreme Court in the case of C.I.T vs. Kelvinator of India Limited, reported in 320 ITR 561 (SC) and the decision of this Court in Debashis Moulik vs. ACIT, reported in 370 ITR 660. The Tribunal after noting the facts, found that the Assessing Officer while completing the assessment under Section 143(3) had taken into consideration all the relevant materials which were placed by the assessee and the Tribunal also on facts found that no new material had come to the possession of the Assessing Officer and the assessment was reopened on the basis of the same material which was available while completing the assessment under Section 143(3) of the Act. Thus, the Tribunal concluded that the reopening of the assessment was bad in law. Learned Counsel appearing for the respondent placed reliance on the decision in the case of Saravana Stocks Investments (P) Ltd. vs. Deputy Commissioner of Income-tax, reported in (2021) 133 taxmann.com 315 (Madras) for the proposition that in the absence of any allegation against the assessee of having failed to disclose any material facts necessary for the assessment during the original scrutiny assessment, the reopening of the assessment was illegal.

As pointed out earlier, the Tribunal has considered the entire factual details available before it and recorded a finding that the reopening of the assessment was based upon the same material available with the Assessing Officer while completing the assessment under Section 143(3) of the Act.

Thus, we find that there is no error or perversity in the factual finding recorded by the Tribunal for us to interfere.

Thus, we find there is no question of law, much less substantial question of law, arising for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

With the dismissal of the appeal, the stay application being IA NO: GA/2/2017 (Old No:GA/624/2017) also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/SN
AR(CR)