OD-1-8 & 1(Suppl.)

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

ITAT/25/2015
IA No:GA/1/2015 (Old No.:GA/534/2015)
M/S. KUMAR TRADERS
VERSUS
ASSISTANT COMMISSIONER OF INCOME TAX

ITAT/26/2015
IA No:GA/1/2015 (Old No.:GA/537/2015)
M/S. R. R. SONS TRADING
VERSUS
ASSISTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE-XVI, KOLKATA

ITAT/28/2015
IA No:GA/1/2015 (Old No.:GA/532/2015)
M/S. HIGAIN CONSULTANCY SERVICES (P) LTD.
VERSUS
ASSISTANT COMMISSIONER OF INCOME TAX,

ITAT/30/2015
IA No:GA/1/2015 (Old No.:GA/538/2015)
M/S. SUNIL FAN INDUSTRIES
VERSUS
INCOME TAX OFFICER, WARD-35(2), KOLKATA

ITAT/31/2015
IA No:GA/1/2015 (Old No.:GA/531/2015)
M/S. S. A. ENGINEERING WORKS
VERSUS
ASSISTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE-XVI, KOLKATA

ITAT/33/2015
IA No:GA/1/2015 (Old No.:GA/533/2015)
M/S. RAMESHAR LAL SAJJAN KUMAR (PRESENTLY VINSA ELECTRICAL P)
VERSUS
ASSISTANT COMMISSIONER OF INCOME TAX

ITAT/34/2015
IA No:GA/1/2015 (Old No.:GA/530/2015)
M/S. DHRUVIYA INTERNATIONAL LIMITED
VERSUS
ASSISTANT COMMISSIONER OF INCOME TAX,
CENTRAL CIRCLE-XVI, KOLKATA

ITAT/35/2015
IA No:GA/1/2015 (Old No.:GA/528/2015)
M/S. MAYUR VYAPAR PVT. LTD.
VERSUS
ASSISTANT COMMISSIONER OF INCOME TAX

ITAT/27/2015
IA No:GA/1/2015 (Old No.:GA/539/2015)
M/S. LEOPARD FINANCIERS PVT. LTD.
VERSUS
ASSISTANT COMMISSIONER OF INCOME TAX,

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 10th May, 2022.

Appearance:-
Ms. Chandrani Das, Adv.
Ms. Riti Basu, Adv.
...for Appellant

The Court : These appeals have been preferred by the assessees under Section 260A of the Income Tax Act, 1961 challenging the common order passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata, dated 12th September, 2014. The appeals before the Tribunal, though filed by different assessees, involved common issues, the Tribunal took up for consideration the appeals together and disposed of by the common impugned order. The assessment year in all the appeals is

1999-00. The assessees have raised the following substantial questions of law for consideration :-

I) Whether on the facts and in the circumstances of the case the impugned order of the tribunal dated 12th September, 2014 was erroneous in so far as it upheld the initiation of reassessment proceedings for assessment year 1999-2000?

II) Whether on the facts and in the circumstances of the case the impugned order of the Tribunal dated 12th September, 2014 was perverse in so far as it ignored the most relevant condition that initiation of reassessment proceeding was a clear case of change of opinion when the materials contained in the recorded reasons where already available with the department much before and also at the time of making the original assessment under section 143(3)?

III) Whether, on the facts and in the circumstances of the case, the order of the Tribunal was clearly erroneous in law and perverse in deciding the case on the basis of a judicial decision in the case of Re: Income Tax Officer -Vs- Purushottam Das Bangur where the reopening was based on information received subsequent to the passing of the assessment reopened as against the present case where reopening was made on the basis of information already available before the framing of original assessment?

The learned Advocate appearing for the appellant/assessee submitted that earnest efforts were taken by them to intimate their clients about the present appeals not only recently but much earlier also. However, the clients have not responded to any of their communication either. In order to substantiate the same, the learned Advocate appearing for the appellant has produced the copies of the email communications sent to the appellants on several dates. Therefore, the learned Advocate reported 'no instruction'. The said submission is taken on record.

Since the appellants have not responded to the repeated communications sent by the learned Advocate for the appellant, it appears that appellants are not interested in prosecuting the matter. Nevertheless, since the matter is of the year 2015 challenging the order passed by the Tribunal dated 12th September 2014, we have taken up the matters for consideration on merits. The common issue involved in all these appeals is whether the reopening of the assessment is valid and proper. The assessments under Section 147, read with Section 143(3), were put to challenge by the appellants before the Commissioner of Income Tax (Appeals) – Central II, Kolkata [CIT(A)] and all the appeals were dismissed. Challenging the same the assessees preferred appeals before the Tribunal. The Tribunal after considering the factual position noted that before the CIT(A) the assessee had raised the three issues namely, i) the issue relating to the validity of the reopening proceedings, ii) the initiation of reassessment proceedings being barred by limitation, and iii) with regard to service of notice under Section 143(2) of the Act.

The learned Tribunal noted that the present litigation was a second round of litigation and the issue pertaining to service of notice under Section 143(2) of the Act was decided against the assessee in the first round of litigation and the said order had attained finality as the assessee had not preferred any appeal against such a finding. Therefore, the said issue was decided against the assessee. With regard to the remaining two issues namely, the validity of initiation of the proceedings for reassessment and as to whether the reassessment proceedings were barred by limitation, the Tribunal examined the facts and upheld the finding rendered by the CIT(A) in the following terms:-

> "6.4. We further noted that before the CIT (A), the Assessee has taken three legal issues; one issue relates to the validity of the initiation of the proceedings, second issue relates to the initiation of re-assessment proceedings barred by limitation and the third issue relates to the service of the notice u/s. 143(2). In the second round of appeal, CIT(A), when the proceedings got reinstated before him, had decided the issue in respect of issuance and service of notice u/s 143(2) against the Assessee. Against that issue, the Assessee has not filed any appeal or cross objection before us. Therefore, that issue got concluded by the order of CIT(A) and we cannot adjudicatte that issue. Even during the course of the argument also, the ld. AR did not raise any such issue even though the issue involved, in our opinion, is a legal issue. We noted that in respect of validity of the proceedings, the Assessee raised two issues before CIT(A); one relating to issue that the proceedings

initiated u/s 143(3) are barred by limitation as notice u/s 148 was issued after expiry of 4 years and other issue is that there are no 'reasons to believe' and the material available was already before the AO. The CIT(A), we noted, has not given any finding in respect of the issue taken by the Assessee that initiation of the proceedings are barred by limitation in view of proviso to Sec. 147 but the CIT(A) decided in favour of the Assessee on the issue that the same information was available with the AO even during the original assessment by observing as under:

> *"4.4 The facts of the present case clearly show that an Assessing Officer who has a proper understanding of Income Tax Act cannot hold a belief that the loan or capital credited in the books of account during the year under appeal is not genuine on the basis of information about some unspecified loan or capital of preceding years. In fact the same information was available with the Assessing Officer even during the original assessment year and at that time this information was not considered to be sufficient to hold that the loan or capital credited during the year could be non genuine. The above mentioned decision of Hon'ble Supreme Court is applicable in the present case and therefore I hold that the notice issued by Assessing Officer u/s 148 was invalid and therefore the reassessment order of the Assessing Officer is annulled"*

6.5 The Assessee has not filed any appeal or cross objection before us. Now, the only issue with which is vested with us for adjudication is whether the AO has 'reason to believe' on the basis of the information available with him. Whether the reasons to believe recorded by the assessing officer are bonafide or not, initiated on the basis of the statement of one of the partner of the assessee at the time of search and seizure."

After rendering the above finding the Tribunal examined as to whether the assessee was justified in contending that the reassessment proceeding was a case of change of opinion. We find from the order passed by the learned Tribunal all the decisions on the point have been noted and elaborate reasons have been given affirming the factual finding recorded by the CIT(A). Wherever the finding was rendered by the CIT (A) in favour of the assessee was also examined and ultimately the reassessment proceedings were held to be valid on facts. Taking note of the elaborate reasons given by the Tribunal, we find no question of law, much less substantial questions of law, arising for consideration in these appeals. Accordingly, the appeals are dismissed.

With the dismissal of the appeals, all connected applications also stand dismissed.

Since the revenue has not been represented by the Counsel in these appeals, we direct Mr. Vipul Kundalia learned Senior Standing Counsel and Mr. Prithu Dudheria, learned Junior Standing Counsel to accept notice on behalf of the respondent and the Ministry of Law and Justice shall regularise their appearance.

Since the appeal being ITAT 27 of 2015 appearing in the supplementary list today is filed challenging the common order passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata, dated 12th September, 2014 and the issue involved was a common one, the same is taken up with the above appeals and stands dismissed with the above observation.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/GH.
AR(CR)