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ITAT/98/2018
IA No.GA/2/2018 Old No.GA/835/2018)
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX, ASANSOL

-Versus-

EASTERN COALFIELDS LTD.

Appearance:
Mr. P. K. Bhowmick, Adv.
Mr. Radhamohan Roy, Adv.
...for the appellant.

Mr. J.P.Khaitan, Sr. Adv.
Ms. Swapna Das, Adv.
Mr. Siddhartha Das, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 4th January, 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 26th July, 2017 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the 'Tribunal' in short) in ITA No.1636/Kol/2014 for the assessment year 2005-06.

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

(i) *Whether in the facts and circumstances of the case, the Learned Tribunal erred in law and on facts by ignoring the record that in fact the appellant had duly challenged the decision of the CIT (Appeals), Asansol in its grounds of appeal by mentioning "that the learned CIT (Appeals), Asansol has erred in law that the order of re-assessment is bad in law since the prescribed procedure was not followed. Accordingly cancelled the order of re-assessment made by the assessing officer and therefore such finding of the Learned Tribunal perverse and not tenable in law"?*

(ii) *Whether in the facts and circumstances of the case, the Learned Tribunal erred in law by holding that the appellant does not have any grievance against the action of CIT(Appeals), Asansol in allowing the appeal on the legal issue that the procedure relating to re-assessment under Section 147 of the Income Tax Act, 1961 mandated by the Hon'ble Supreme Court of India that assessee's objection in respect of re-opening has to be disposed of by a speaking order has not been followed is incorrect?*

We have heard Mr. P. K. Bhowmick, learned standing counsel appearing for the appellant/revenue and Mr. J.P.

Khaitan, learned senior counsel assisted by Ms. Swapna Das, learned counsel appearing for the respondent/assessee.

The short issue which falls for consideration is whether the order passed by the Tribunal affirming the order passed by the CIT (Appeals) holding that the reassessment was bad in law calls for interference. We find that initially the assessing officer did not comply with the mandate of the Hon'ble Supreme Court in GKN Driveshaft (India) Ltd. Vs. ITO & Ors. (2003) 259 ITR 19 (SC), in the sense that he did not pass a speaking order on the objection given by the assessee to the proposal to reassess the income. When this order was put to challenge before the CIT (Appeals), the order was set aside and the matter was remanded to the assessing officer to pass a speaking order on the objection by keeping the appeal pending on the file of the CIT(A). Despite such opportunity, the assessing officer failed to follow the mandate laid down by Hon'ble Supreme Court in GKN Driveshaft (India) Ltd. When the appeal was taken up by the CIT (Appeals), this aspect was noted and relief was granted to the assessee. This order was tested for its correctness by the Tribunal and on facts we find that the Tribunal was right in holding that the order passed by the CIT (Appeals) holding that the reassessment proceedings were bad in law had attained finality. Thus, we are of the view that considering the peculiar facts and circumstances of the case, relief was granted to the assessee. We find that no question of law much less substantial question of law arises for consideration in this appeal.

Accordingly, the appeal (ITAT/98/2018) fails and stands dismissed.

The connected application for stay (IA No.GA/2/2018) also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

nm./S.Das