

OD-23

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

ITAT/91/2021
IA No.GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX-9, KOLKATA
VS.
BINOD KUMAR TEKRIWAL

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK
Date : 13th July, 2022

Appearance :
Ms. Smita Das De, Adv.
...for the appellant in item no.23.
Mr. Prithu Dudharia, Adv.
...for the appellant in item no.22.
Mr. S. Roy Chowdhury, Adv.
...for the appellant in item no.24.

Ms. Swapna Das, Mr. Siddhartha Das, Adv.
....for respondents.

The Court : This appeal by the revenue filed under section 260A of the Income Tax Act, 1961 [the Act, for brevity] is directed against the common order passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA No.1134/Kol/2018 for the assessment year 2010-11.

The revenue has raised the following substantial question of law for consideration.

- i) Whether the Income Tax Appellate Tribunal erred in law in not upholding the order of Principal Commissioner of Income Tax under Section 263 of the Income Tax Act, 1961 as much as the Assessing Officer completed an

assessment which is erroneous and prejudicial to the interest of revenue as the Assessing Officer did not add back the amount of Rs.48,84,550/- being the bogus purchase of shares which was directed by the DGIT (Investigation), Mumbai through the DIT(Investigation), West Bengal & Sikkim ?

- ii) Whether the Learned Income Tax Appellate Tribunal erred in law in setting aside the order of Principal Commissioner of Income Tax passed under Section 263 of the Income Tax Act, 1961 who legally assumed jurisdiction as the assessment order of Assessing Officer is erroneous and prejudicial to the interest of Revenue ?

We have heard the learned standing Counsel appearing for the appellants and the respondents.

The short question involved in these appeals is whether the Principal Commissioner of Income Tax – 10, Kolkata [PCIT] could have exercised his powers under section 263 of the Act. In our considered view, the tribunal has elaborately examined this issue, taken note of the decision of the Hon'ble Supreme Court in *Malabar Industrial Co. Ltd. vs. CIT* [2000] 243 ITR 83 [SC] and allowed the appeal. Further, the tribunal has noted that the assessing officer had made an addition of 2% to the gross profit over and above the rate of gross profit of 4.63% totalling to 7.63%. It appears that after completing the assessment the assessing officer addressed the PCIT stating that certain error has occurred in the assessment order and requested him to review the order under section 263 of the Act. Whether such a procedure adopted by the PCIT was legally sustainable was examined by the tribunal and in our considered view after taking note of the various

decisions of the Hon'ble Supreme Court it was rightly pointed out that section 263 of the Act does not permit substituting one opinion for another. That apart, the tribunal has specifically recorded a factual finding that the assessee had produced all necessary details of the purchase, sales, audited books of accounts, quantity details, etc.. Further, the tribunal found that the assessee's books of accounts were audited by the Chartered Accountant, the quantity details were given in respect of opening stock, purchase, sales, closing stock, etc. Furthermore, the tribunal pointed out that no discrepancy was found between the purchase shown by the assessee and the sales decline. Thus, on facts, the tribunal concluded that assumption of jurisdiction by the PCIT under section 263 of the Act was erroneous. In our considered view, there is no error in the order passed by the tribunal nor there is any perversity in its approach for us to interfere. We find that there is no question of law, much less substantial question of law arising in this appeal. Consequently, the appeals are dismissed.

Consequently, all the connected applications are dismissed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

Pkd/SN.