OD-50

IA No. GA/1/2019
In ITAT/104/2019
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX, DURGAPUR
VERSUS
M/S. SINHOTIA METALS AND MINERALS PVT. LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE ANANDA KUMAR MUKHERJEE

Date : 7th January, 2022

Appearance :-

Mr. P. K. Bhomick, Adv.
Mr. M. N. Bandopadhyay, Adv.
... For Appellant
Mr. S. M. Surana, Adv.
Mr. Bhaskar Sengupta, Adv.
... For Respondent

The Court : This appeal by the revenue under Section 260A of the Income Tax Act, 1961(the Act for brevity) is directed against the order dated 16th January, 2019 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (Tribunal) in ITA No. 889/Kol/2017 for the assessment year 2012-13. The revenue has raised the following substantial questions of law for consideration:

(a) Whether on the facts and circumstances of the case, the learned Tribunal on correct interpretation of law in Section 263 of the Income Tax Ac, 1961 set aside the revisional order and in holding that Principal C.I.T has not exercised its jurisdiction under Secton 263 of the Act himself?

(b) Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal has erred in law in holding that the PCIT has exercised the jurisdiction under Section 263 at the instance of AO/JCIT which is a wrong interpretation as the PCIT after examining the case records has directed the JCIT to re-submit the proposal as per provision to explanation 2 to Section 263 of the Act?

We have heard Mr. P. K. Bhowmick, learned Standing Counsel appearing for the appellant/revenue and Mr. S. M. Surana, learned Counsel appearing for the respondent/assessee.

The contention of the revenue before us is that the Tribunal failed to appreciate that the Principal Chief Commissioner of Income Tax had directed the Joint Commissioner of Income Tax to re-submit the proposal after examining the records and after drawing satisfaction that the order of the Assessing Officer was erroneous and prejudicial to the interest of the revenue and the order of the Tribunal is not sustainable. It is further contended before us that the Principal Commissioner of Income Tax has not exercised the jurisdiction under

Section 263 of the Act at the instance of the Joint Commissioner of Income Tax and it is a wrong interpretation given by the Tribunal.

We have gone through the order passed by the Tribunal, wherein we find that the Tribunal has noted the decision of the co-ordinate Bench of the Tribunal in the case of M/s. Rapayan Udyog in ITA No.1073/Kol/2012, dated 28th October, 2018. After noting the said decision the Tribunal points out that the appellant department has not controverted the contents of the letter of the Joint Commissioner of Income Tax dated 18th August, 2016 and has recorded that the said letter clearly brings out that the PCIT has called for proposal from the JCIT/Assessing Officer to exercise jurisdiction under Section 263 of the Act. Therefore, the Tribunal concluded that the PCIT has not exercised jurisdiction under Section 263 of the Act himself, but he exercised jurisdiction at the instance of the Assessing Officer/JCIT, which is against the provisions of law.

The argument made by the learned Standing Counsel is that it is the PCIT who has exercised jurisdiction under Section 263 of the Act. From the order passed by the Tribunal we find that the department could not controvert the contents of the letter dated 18th August, 2016. If, according to the department, the contents of the letter were otherwise, then it is for the department to approach the Tribunal for necessary rectification or clarification and the correctness of the order of the Tribunal cannot be decided by us in an appeal under Section 260A of the Act by bringing certain submissions which were never made before the Tribunal. Therefore, we are not inclined to interfere with the order passed by the Tribunal and accordingly, the appeal is dismissed. However, we leave it open to the appellant/department to approach the Tribunal for clarification or rectification of the order, if they are so advised.

The substantial questions of law are answered against the revenue.

With the dismissal of the appeal, the stay application (IA No. GA/1/2019) also stands dismissed.

(T.S. SIVAGNANAM, J.)

(ANANDA KUMAR MUKHERJEE, J.)

SN/mg
AR(CR)