

ITAT/115/2021
IA No.GA/2/2021

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME
TAX, CENTRAL-1, KOLKATA

-Versus-

KARTICK BOSE

Appearance:
Mr. Soumen Bhattacharyya, Adv.
...for the appellant.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE BIVAS PATTANAYAK

Date : 8th July, 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 22nd January, 2020 passed by the Income Tax Appellate Tribunal, Kolkata, "A" Bench, Kolkata in ITA No.1027/Kol/2018 for the assessment years 2013-14.

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

i) Whether the Learned Tribunal committed substantial error in law in holding that the "purchases" other than "other expenses", were not disallowed by A.O. in original assessment and assessee had also not produced

necessary evidence of purchases before Commissioner in 263 proceedings and thus wrongly placing reliance on cases of Malabar Industrial Co. Ltd. 243 ITR 83 & Max India 295 ITR 282.

ii) Whether the Learned Tribunal committed substantial error in law in holding that a view has already been taken by Assessing Officer on 'Other Expenses' by making 5% disallowance thus re-calculating Gross Profit, whereas commissioner's finding, in 263 revisionary order, is related to 'unexplained Bogus purchases', was for disallowance @25%, following Gujarat High Court decision in case of Vijay Proteins Ltd. Vs. CIT, (2015) 58 taxmann.com 44.

We have heard Mr. Soumen Bhattacharyya, learned standing counsel for the appellant/revenue. Though notice has been served on the respondent/assessee, none appears for the respondent.

The assessee filed the return of income for the assessment year under consideration, (A.Y.- 2013-14) on 30th September, 2013. The case was selected for scrutiny and notice under Section 143(2) of the Income Tax Act was issued on 30th September, 2014. The assessee filed a revised return on 30th March, 2015 and, thereafter notice under Section 142(1) of the Act was issued and the case was discussed and the assessing officer completed the assessment under Section 143(3) by order dated 24th March, 2016. The assessing officer after conducting an enquiry held that the assessee has shown very low net profit against large

gross receipts in its profit and loss account. The assessee was granted opportunity to produce details and documents which were submitted and the same was examined by the assessing officer. However, since the assessee could not produce any evidence relating to various purchases and expenses claimed in the profit and loss account of all two companies and the assessee also agreed to an estimated disallowance of a part of the expenses, the assessing officer completed the assessment by fixing the disallowance at 5% of Rs.84,90,060/-. After the assessment was completed, the Principal Commissioner of Income Tax (Central)-I, Kolkata (PCIT) exercised his power under Section 263 of the Act on the ground that the disallowance of other expenses estimated at 5% as done by the assessing officer was incorrect. A notice was issued to the assessee for which the assessee responded and submitted that during the course of assessment proceedings, the assessee produced all the relevant documents before the assessing officer relating to its purchase and expenditure and the proposal of the PCIT to fix the disallowance at 25% on purchase, that too, on ad hoc basis without any evidence cannot be done and requested for dropping the proceedings. Certain decisions of the tribunal were also relied on by the assessee. The PCIT did not agree with the assessee and proceeded to confirm the proposal made in the show cause notice and directed the assessing officer to make necessary enquiries and verification of the purchases to find out

its genuineness and make appropriate disallowance keeping in mind the decision of the High Court of Gujarat in *Vijay Proteins Ltd. Vs. CIT*, reported in (2015) 58 taxmann.com 44.

The assessee preferred appeal before the tribunal. The tribunal, in our view, rightly took note of the decision of the Hon'ble Supreme Court in *Malabar Industrial Co. Ltd. Vs. Commissioner of Income Tax*, reported in (2000) 243 ITR 83 (SC) and *Commissioner of Income Tax Vs. Max India*, reported in (2007) 295 ITR 282 (SC) and proceeded to examine the facts of the case. The tribunal noted that there was no dispute with regard to the assessee's sale and purchase figures between the group concerns which has been accepted by the assessing officer who proceeded to disallow an estimated 5% of the inflated amount. Considering the factual position the tribunal held that the twin conditions required to be satisfied for invoking Section 263 of the Act was absent and, therefore, the assumption of jurisdiction by the PCIT was held to be bad in law. We note that the PCIT while invoking his power under Section 263 of the Act has proceeded based on conjecture and there is no finding recorded that the books of accounts of the assessee were rejected. Furthermore, the specific issue raised by the assessee that the documents and details were furnished before the assessing officer was not found to be incorrect. Therefore, we are of the view that the tribunal having taken note of the factual position had rightly interfered with the

order passed by the PCIT. The learned standing counsel for the appellant placed reliance on the decision of the High Court of Gujarat at *Ahmedabad in N.K. Industries Ltd. Vs. Dy. CIT* in Tax Appeal No.240 of 2003 etc. dated 20th June, 2016. This decision is referred to since the decision in *Vijay Proteins Ltd.* has been relied upon in the said case.

We find that the decision in *Vijay Proteins Ltd.* is distinguishable on facts since in the said case it was conclusively found that the entire purchases were shown to be based on fictitious invoices and have been debited in trading account and the entire transaction was held to be bogus. Furthermore, it was pointed out that the tribunal had come to a categorical conclusion that the amount of Rs.2,95,93,288/- representing alleged purchase from bogus suppliers and, therefore, it was held that the tribunal could not have restricted the disallowance only to Rs.73,23,32/-. Thus, there was a factual adjudication in the said case and the order passed by the tribunal was faulted for rejecting the disallowance. The decision is distinguishable on facts and cannot in any manner advance the case of the appellant before us.

For the above reasons, we find that there is no question of law much less substantial question of law arises for consideration in this appeal.

Accordingly, the appeal (ITAT/115/2021) fails and is dismissed.

Consequently, the connected application for stay (IA No.GA/2/2021) also stands dismissed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)