

OD-13 & 14

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

ITAT/188/2018
IA NO: GA/1/2018 (Old No:GA/1412/2018)
PRINCIPAL COMMISSIONER OF INCOME TAX-4, KOLKATA
VERSUS
M/S. BENGAL UNITED CREDIT BELANI HOUSING LTD.

ITAT/188/2018
IA NO: GA/1/2018 (Old No:GA/1414/2018)
PRINCIPAL COMMISSIONER OF INCOME TAX-4, KOLKATA
VERSUS
M/S. BENGAL UNITED CREDIT BELANI HOUSING LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 6th April, 2022

Appearance :-

Mr. Aryak Dutt, Adv.

... For Appellant

Mr. Pratyush Jhunjhunwala, Adv.

Mr. S. Rudro, Adv.

... For Respondent

The Court : Heard Mr. Aryak Dutt, learned Standing Counsel appearing for the appellant/revenue and Mr. Pratyush Jhunjhunwala, learned Counsel appearing for the respondent/assessee.

This application has been filed for condonation of delay of 172 days in filing the appeal. By order dated 24th August, 2021 delay was

condoned. However, the application is still shown to be pending. Since the delay has already been condoned, the application being IA NO: GA/1/2018 (Old No:GA/1412/2018) is allowed.

ITAT/188/2018

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 31st July, 2017 passed by the Income Tax Appellate Tribunal, “D” Bench, Kolkata in ITA 155/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 the circumstances of the case, the Learned Tribunal has erred in law or in fact in quashing the order passed under Section 263 of the Income Tax Act, 1961 without appreciating the totalities of the facts and circumstances raises substantial question of law?
- b) Whether on the facts and the circumstances of the case, the Learned Tribunal has erred in law or in fact in not appreciating that in a proceeding under Section 263A of the Income Tax Act, 1961, the CIT(Appeals) must come to a conclusion that the assessment by the assessing officer has to be erroneous and ought to be prejudicial to the interest of revenue and the learned tribunal had failed to appreciate that the CIT(Appeals) came to a definite findings that the

order passed under Section 143(3) of the Income Tax Act, 1961 by the assessing officer was erroneous and prejudicial to the interest of revenue and was, therefore, liable to be set aside?

We have heard Mr. Aryak Dutt, learned Standing Counsel appearing for the appellant and Mr. Pratyush Jhunjhunwala, learned Counsel appearing for the respondent.

The short question involved in this appeal is whether exercise of power by the Principal Commissioner of Income Tax, Kolkata-IV under Section 263 was sustainable or not. The assessee is a company engaged in real estate business and claimed deduction under Section 80 IB. The case was discussed with the assessee by the Assessing Officer and several details have been called for. After examining the details the Assessing Officer completed the assessment under Section 143(3) dated 4th March, 2015. In the opinion of the Principal Chief Commissioner of Income Tax (PCIT), the assessment was erroneous and prejudicial to the interest of the revenue and therefore, proceedings were initiated under Section 263 of the Act. Despite explanation given by the assessee, the PCIT rejected the same and passed an order under Section 263 of the Act by setting aside the assessment order dated 4th March, 2015. Challenging the said order the assessee preferred appeal before the Tribunal. The Tribunal was required to consider as to whether the exercise of power under Section

263 of the Act was justified and whether the twin conditions which are required to be satisfied have been made out. The Tribunal notes that the Assessing Officer issued notice under Section 142(1) of the Act on 7th May, 2014 and 17th June, 2014, wherein he has called for several details including details of the advance received from customers. The Tribunal noted that the assessee has given details as called for by the Assessing Officer and the details contained in annexures in support of the advances received giving names of each of the party and these records were also placed before the Tribunal in the form of a paper book. Further, the Tribunal noted that the assessee had filed tax audit report under Section 44AB of the Act in Form no.3CA along with the particulars and also furnished Form no.3CD. Further, the Tribunal noted that in respect of deduction claimed under Section 80IB(10) of the Act the assessee has given the audit report in Form no.10CCB and also furnished the basis on which the deduction was claimed under Section 80IB. After noting these facts which were not in dispute, the Tribunal examined as to whether the PCIT has recorded any reasons as to how the assessment order dated 4th March, 2015 was erroneous so far as prejudicial to the interest of the revenue. The Tribunal on facts found that no reasons have been recorded by the PCIT justifying his action invoking the power under Section 263 of the Act. Thereafter, the Tribunal has proceeded to consider as to whether the conditions stipulated for being entitled for deduction under Section 80IB(10) was fulfilled by the assessee and on facts it was satisfied that

the assessee had fulfilled the conditions and therefore, held that the assumption of jurisdiction under Section 263 of the Act was not sustainable in law. Thus, we find that there is no question of law, much less substantial questions of law, arising for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

With the dismissal of the appeal, the stay application being IA NO: GA/1/2018 (Old No:GA/1414/2018) stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)