OD-21

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

ITAT/271/2018
IA NO:GA/2/2018 [OLD NO:GA/2799/2018]

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-2, KOLKATA
VS.
ASHOKE SURANA
………

PRESENT:
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date: 10th February, 2022.

Appearance:
Mr. S.N. Dutta, Adv.
…for the appellant.

Mr. S.M. Surana, Adv.
Mr. Bhaskar Sengupta, Adv.
…for the respondent.

The Court: This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961, (the Act, in brevity) is directed against the order dated 11.8.2017 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (Tribunal) in ITA No.79/Kol/2014 for the assessment year 2010-11. The revenue has raised the following substantial questions of law for our consideration.

a. Whether on the facts and in the circumstances of the case and in law the ITAT, Kolkata has erred in conferring that the enquiry made by the AO u/s.143(3) of the Income Tax Act, 1961 regarding the claim of loss on sale of film right was complete and as such the case does not fall within the ambit of "lack of enquiry" when it is apparent from record that the assessee has simply deleted the amount of Rs.4 lakhs from his accounts in a ledger as cancelled the agreement on 22.6.2009 when the said film right was purchased on 22.8.2008 at Rs.4 lakhs and no details have been filed by the assessee as to what happened with the film right and whether it was returned back or sold to others ?

b. Whether on the facts and in the circumstances of the case and in law the Tribunal has erred in concluding that the enquiry made by the AO under section 143(3) regarding the claim of loss on sale of film right was complete and as such the case does not fall within the ambit of "lack of enquiry" when it is apparent from that the assessee had not filed complete and adequate evidence for allowance of the impugned loss ?

c. Whether on the facts and in the circumstances of the case the ITAT has also erred by overlooking the fact that incomplete investigation/enquiry during assessment is a sufficient cause for invoking jurisdiction under section 263 ?

We have heard Mr. S. N. Dutta, learned senior standing counsel for the appellant/revenue and Mr. S. M. Surana, learned senior counsel assisted by Mr. Bhaskar Sengupta for the respondent/assessee.

The short question which falls for consideration is whether the Commissioner of Income Tax, Central-II, Kolkata (CIT) was justified in invoking his power under section 263 of the Act on the ground of lack of enquiry by the assessing officer. This aspect was examined by the Tribunal and after noting the facts, has held that the assessee has given explanation pursuant to notice issued by the assessing officer under Section 142(1) dated 25.11.2011 and in the said notice a specific query has been raised calling for the details of loss caused on account of video rights to the tune of Rs.4 lakhs. The assessee by reply dated 05.12.2011 and 09.12.2011 has given explanation and this has been noted by the assessing officer. After examining the same, the assessing officer has completed the assessment. Therefore, the Tribunal held that the assessment proceeding was completed after going through the submission of the assessee on the point in issue, which prompted the CIT to issue notice under Section 263 of the Act. The Tribunal has elaborately examined the facts and found that there is absolutely no justification for invoking Section 263 of the Act, more particularly, when the issue had been examined by the assessing officer after putting the assessee on notice and after perusing the explanation and the documents placed. Thus, we find that there is no question of law much less substantial question of law arising for consideration in this appeal. Accordingly, the appeal is dismissed.

The application, IA NO.GA/2/2018 [OLD No:GA/2799/2018] also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

pkd/s.pal
AR(CR)