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

ITAT/161/2021
IA No.GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX-9, KOLKATA
VS.
DIPAK KUMAR DEY

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK
Date : 20th July, 2022

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

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 order dated 27th March, 2019 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata in ITA No.1452/Kol/2017 relating to assessment year 2010-11.

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

i) Whether the learned ITAT has committed substantial error in law by holding that cash payments made by the assessee to M/s. Johal & Co. [Wine Sales] Pvt. Ltd. in violation of section 40A[3] of the Income Tax Act, 1961 was covered by the exception provided in Rule 6DD[b] with regard to payment made to Government when receiver of payment is neither a Government organization or authorized by the Government to receive payment on behalf of the Government in cash as such the order of the Tribunal is perverse ?

ii) Whether on the facts and circumstances and law of the case, the order of the learned Income Tax Appellate Tribunal is perverse in as much it has relied on its earlier order dated 8.9.2017 in ITA No.768/Kol/2015 where it has given a finding that purchases have been verified and are not in doubt is patently wrong in as much as no such finding was arrived at by the AO in the assessment order ?

We have heard learned standing counsel appearing for the appellant.

On perusal of the order passed by the learned tribunal we find that the tribunal was fully justified in dismissing the appeal filed by the assessee as having become infructuous on the ground that the earlier order passed by the Principal Commissioner of Income Tax in exercise of its power conferred under section 263 of the Act was set aside. The present appeal before the tribunal has arisen out of a second order passed under section 263 of the Act. Therefore, the basis of the impugned order being no longer in existence, the tribunal was right in dismissing the appeal as having become infructuous. We find no question of law much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal fails and the same is dismissed.

Accordingly, stay application being GA/2/2021 stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

pkd/GH