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

IA NO.GA/2/2021
In
ITAT/165/2021
PRINCIPAL COMMISSIONER OF INCOME TAX – 1, KOLKATA
VS.
M/S. BIP DEVELOPERS (P) LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : February 10, 2022.

[Via Video Conference]

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

Mr. Pratyush Jhunjhunwala, Adv.
Mr. Indranil Banerjee, Adv.
Mr. S. Rudra, Adv.
... for the respondent

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 18th December, 2019 passed by the Income Tax Appellate Tribunal, 'C' Bench, Kolkata (Tribunal) in ITA No. 1366/Kol/2019 for the assessment year 2013-14.

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

a) Whether the ITAT has jurisdiction or authority to override the statutory provision of law as by the impugned order the Tribunal sought to violate Section 139(5) of the I.T. Act, 1961 as such the claim of assessee for revised recomputation of income by a letter was allowed without filing revised income by the assessee as required under Section 139(5) of the IT Act, as such the order impugned is perverse?

b) Whether the Assessing Officer has passed a correct order in rejecting the request of the assessee for revised computation of income without filing a revised return of income as required under section 139(5) of the IT Act, 1961 and the ITAT wrongly passed the order allowing such claim of the assessee which is not in conformity with the decisions of the Supreme Court in the case of Goetze (India) Ltd. –vs- CIT (2006) 157 Taxman I (SC) and explained by Orissa High Court in the case of Orissa Rural Housing Development Corporation Ltd. –vs- ACIT (2006) 157 Taxman (SC)?

We have heard Mr. S.N. Dutta, learned senior standing counsel for the appellant/revenue and Mr. Pratyush Jhunjhunwala, duly assisted Mr. Indranil Banerjee and Mr. S. Rudra, learned counsel for the respondent/assessee.

The short issue which falls for consideration is whether the Commissioner of Income Tax (Appeals) – 5, Kolkata [CIT(A)] and the Tribunal was right in granting the relief sought for by the assessee when such relief was not claimed by the assessee before the assessing officer even in the original return or by way of revised return but only by way of a letter submitted during the assessment proceeding. The assessing officer non-suited the assessee on the ground that such a claim could not have been made by the assessee without filing a revised return. In the light of the decision of the Hon'ble Court in *Goetze India Ltd. vs. CIT : 284 ITR 323 (SC)*, the legal issue is no longer *res integra*. The decision of *Goetze India* does not impinge on the power of the appellate authority and it only deals with the power of the assessing officer to entertain an additional claim without the revised return. The identical issue was considered by us in the case of *PCIT vs. Eastern Coalfeilds Ltd.* in ITAT 96 of 2018 dated 4th January, 2022. In the said decision, we have also noted about the decision which was passed by this Court in *Commissioner of Income Tax vs. Britannia Industries Ltd.* reported in *[2017] 396 ITR 677 (Cal).*

Thus, following the above decisions, we find the Tribunal was right in dismissing the appeal filed by the revenue.

Accordingly, the appeal is dismissed.

Substantial questions of law are answered against the revenue.

Consequently, the stay application also stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

GH/RS