

O-156

ITA/19/2020

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

PRINCIPAL COMMISSIONER OF
INCOME TAX-4, KOLKATA

-Versus-

HITESH DISTRIBUTORS PVT. LTD.

Appearance:
Ms. Smita Das De, Adv.
...for the appellant.

Mr. Avratosh Mazumdar, Sr. Adv.
Mr. Avra Majumder, Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE SUPRATIM BHATTACHARYA

Date : 26th September, 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 13th July, 2018 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in ITA No.1512/Kol/2016 for the assessment year 2012-13.

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

"Whether on the facts and in the circumstances of the case, the impugned order of the tribunal dated 13th July, 2018 is perverse with regard to the factual issues raised in paragraph 5 of the petition".

We have heard Mr. Smita Das De, learned standing counsel appearing for the appellant/revenue and Mr. Abhratosh Mazumdar, learned senior counsel assisted by Mr. Avra Majumdar, learned advocate appearing for the respondent/assessee.

The short issue which falls for consideration is whether the order passed by the learned appellate tribunal suffers from perversity and on perusal of the order of the learned tribunal, we find that the learned tribunal found that the order of the assessing officer to be perverse and approved the order of the Commissioner of Income Tax (Appeals) [CIT(A)] who reverse the order passed by the assessing officer. The following observation would be germane :

"In response to the summon u/s 131 of the Act, the assessee replied that all the requirements were complied to the notices u/s 133(6) of the Act and that the shareholders are not in the control of the assessee and hence the Assessing Officer may enforce the attendance by exercise of his powers under the Act. Regarding the companies which had modified their addresses, the current address was given. As far as the summons u/s. 131 of the Act was concerned, it was submitted that in compliance to these summons, Mi. Babuial Agarwal appeared before the Assessing Officer. The reply was filed on 26/02/2015. The Assessing Officer issue a, show cause letter dt.

16/03/2015 to the assessee. The assessee filed a reply on 24.03.2015, a copy of which is placed at pages 16 to 18 of the paper book. None of these aspects have been mentioned by the Assessing Officer in the assessment order for the reasons best known to him. Despite the assessee filing voluminous evidences, the Assessing Officer in a perverse manner records that there is not co-operation, whatsoever from the assessee."

From the above factual finding, it is seen that the respondent/assessee had filed reply on 24th March, 2015 which was placed in the paper book before the learned tribunal and this reply was on behalf of the respondent to the show cause notice issued by the respondent/assessee dated 16th March, 2013. The CIT(A) as well as the tribunal found that the assessing officer has not mentioned anything in his assessment order for reasons attributable to him. Therefore, the CIT(A) and the tribunal concluded that the view taken by the assessing officer was utterly perverse. In our considered view, we find that there is no error in the finding rendered by the tribunal in the said aspect. That apart, the learned tribunal after noting the facts found that the share applicants are genuine companies having substantial assets and income as well as activities. They are not paper companies or sale companies. Thus, we find there is no perversity in the observations/findings rendered by the learned tribunal for us to interfere with the order.

In the result, the appeal [ITAT/19/2019] stands dismissed and the substantial question of law is answered against the revenue.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

S.Das/As.