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

ITAT/62/2022
IA No.GA/1/2022
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS.
J. K. TYRE & INDUSTRIES LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 14th September, 2022

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

Mr. Ranjeet Kumar Murarka, Sr. Adv.
Mr. Vivek Murarka, Adv.
Mr. Dibanath Dey, Adv.
...for respondent

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 22nd December, 2021, passed by the Income Tax Appellate Tribunal, 'A' Bench, Kolkata (Tribunal) in ITA No.176/Kol/2021 for the assessment year 2016-17.

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

- i) Whether in the facts and circumstances of the case the Tribunal was justified in law by setting aside the order passed under Section 263 of the said Act on the ground that the Assessing Officer had already conducted

an inquiry on the issues in question in connection to the proceedings initiated under Section 263 of the said Act ?

- ii) Whether in the facts and circumstances of the case the Tribunal was justified in law to quash the order passed under Section 263 with regard to the issues of Book Profit having tax effect amounting to Rs. 11,49,68,176/- ?
- iii) Whether in the facts and circumstances of the case the Tribunal was justified in law to quash the order passed under Section 263 on account of claim of the weighted deduction under Section 35(1) of the said Act ?
- iv) Whether in the facts and circumstances of the case the Tribunal was justified in law to allow the appeal of the assessee by quashing the revisional order without verifying the facts and circumstances of the case thereby giving arise to perversity which is otherwise erroneous in law ?

We have heard Ms. Smita Das De, learned standing Counsel appearing for the appellant/revenue and Mr. Ranjeet Kumar Murarka, learned senior Counsel, assisted by Mr. Vivek Murarka, learned Advocate for the respondent/assessee.

The short question involved in the instant case is whether the Principal Commissioner of the Income Tax - 1, Kolkata (for short, PCIT) was justified in exercising his power under Section 263 of the Act on the ground that the Assessing Officer while completing the assessment under Section 143(3) of the Act did not make proper enquiries on three issues. The assessee had submitted an elaborate explanation as well as written submission pointing out the power of the revisional authority and that if it is established that the Assessing Officer has conducted enquiry on the various issues which were discussed during the

assessment proceedings and one plausible view had been taken, the revisional authority cannot sit in judgment over such an assessment order as if exercising power as a first Appellate authority.

Being aggrieved by the order passed by the PCIT dated 25th March, 2021, in the appeal before the Tribunal as well as before us, the assessee has been able to establish that three issues which were pointed out by the PCIT was, in fact, discussed by the Assessing Officer by issuing notices under Section 142(1), dated 12th September, 2018 and 12th October, 2018. The assessee had submitted their reply to these notices on 4th October, 2018 and 12th November, 2018, copies of which have been placed before us by the learned Counsel for the respondent.

From the said records it is evidently clear that all the three issues which were pointed out by the PCIT have, in fact, been threadbare discussed by the Assessing Officer and thereafter they have arrived at a conclusion. Thus, it is seen that it is not a case of no enquiry conducted by the Assessing Officer but the Assessing Officer had given a questionnaire to the assessee and after inviting a reply on the various queries raised, the assessment has been completed. The settled legal position on the exercise of power under Section 263 of the Act is that the supervisory jurisdiction to circumstances must exist to enable the Commissioner to exercise power of revision namely, the assessment order should be erroneous and it should be prejudicial to the interest of the revenue. If the Assessing Officer has taken a decision in accordance with law, the said order cannot be termed to be erroneous by the revisional authority merely because the order should have been written in a different format or the order should be an

elaborate order. Furthermore, the consideration of revisional authority under Section 263 must be based on materials on record of the proceedings called for by him. If there is no material on record on which it can be said that the revisional authority acting in a reasonable manner could have come to such a conclusion, the very initiation of the proceedings by the revisional authority will be illegal and without jurisdiction.

On a reading of the order passed by the revisional authority under Section 263 of the Act, it is evidently clear that there is no specific finding rendered by the authority as to how the order passed by the Assessing Officer was erroneous and all that the revisional authority states is that no enquiry was conducted, which is factually incorrect.

Thus, we find that the learned Tribunal rightly granted relief in favour of the assessee and we find no grounds to interfere with the order passed by the learned Tribunal.

Accordingly, the appeal fails and is dismissed.

The substantial questions of law are answered against the revenue.

The stay application being IA No.GA/1/2022 stands closed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)