OD-6

ITAT/71/2022
IA NO.GA/1/2022

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

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA

-Versus-

M/S. COAL SALE CO. LTD.

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

Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Soumitra Chowdhury, Adv.
Mr. Avra Mazumdar, Adv.
Md. Sk. Billawal Hossain, Adv.
Mr. Kausheyo Roy, Adv.
Mr. Binayak Gupta, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE BIVAS PATTANAYAK

Date : 29th July, 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 17th December, 2021 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (in short the 'Tribunal') in ITA No.2364/Kol/2019 and CO No.46/Kol/2019 for the assessment year 2014-15.

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

i) *Whether the Learned Tribunal has committed substantial error in law in holding that the jurisdictional requirement 'reason to believe' (escapement of the income) had not been met in the reason recorded by the assessing officer and further allowing the cross objection of the assessee?*

ii) *Whether the Learned Tribunal has committed substantial error in law in dismissing the grounds of the revenue on technical point that the re-assessment proceeding under Section 147 of the Income Tax Act, 1961 was bad in law?*

iii) *Whether the Learned Tribunal has committed in law by holding that assessing officer erred in jumping to the consolation that assessee's income ahs escaped assessment on receipt of certain information and assessing officer could not have formed a belief that income chargeable to tax has escaped assessment?*

We have heard Mr. Soumen Bhattacharyya, learned standing counsel for the appellant/revenue and Mr. Abhratosh Majumdar, learned senior counsel assisted by Mr. Avra Majumdar, learned Advocate appearing for the respondent/assessee.

The short question involved in the instant case is whether the reopening of the assessment as done by the assessing officer was justified. The reasons for reopening, according to the assessing officer, was that the assessee, on earlier bogus bill, has made accommodation entry through M/s. Bridge & Building Construction Co. Ltd. via bank account in IDBI Bank. The said allegation was made based upon a statement recorded from one Entry Operator, Mr. Ajit Kumar Jindal. The assessing officer, after referring to the statement, came to the conclusion that income assessable to tax has escaped assessment. Aggrieved by the same, the assessee preferred appeal before the Commissioner of Income Tax (Appeals)-II, Kolkata [CIT(A)]. By order dated 17th July, 2018 the appeal was allowed. Aggrieved by the same, the revenue preferred appeal before the tribunal which was dismissed. Challenging the same the revenue has filed the present appeal.

At the first blush, one gets an information and say that the respondent/assessee had transactions with the said company. However, on scrutiny of the facts it appears to be otherwise. This has been clearly brought out by the CIT(A) in its order. We quote the relevant portion of the said order which reads as follows:

> *"I find that the assessee complied with all the requisitions vide letter dated 20.12.2018. The assessee also enclosed the coy of the agreement with the said Bridge and Building Construction Co. Ltd. along with the weekly reports, dispatch advises of the Railways and the copies of the bills raised by the said Bridge and Building Construction Co. Ltd. The name of the parties to*

whom dispatches of coal was made was also mentioned in the agreement. Therefore, the AO was wrong in observing that no third-party involvement/evidence was produced by the assessee. The assessee duly gave the name of the third party for whom services were rendered. It was also mentioned in the letter dated 20.12.2018 that one Mr. Purushottam Vyas along with his team was supervising the work at Colliery and liaison work with the principles on behalf of Bridge and Building Construction Co. Ltd. The AO did not controvert the submissions of the assessee. The appellant, in reply to the show cause notice i.e. 22.12.2018, also submitted a confirmation from M/s. Ultratech Cement Ltd. wherein they confirmed that Purushottam Vyas used to visit the plant as Supervisor for dispatch of Coal from Collieries. The AO has completely ignored the said evidence but also by passing the same by observing that no "Single" from anybody apart from the assessee itself and the purported service provider was produced. This observation itself is incorrect because service providers also charged 12% service tax on such services. The required TDS was also made and paid and evidence whereof was filed. The AO has also mentioned the voluminous papers were filed but none of the evidences have been controverted."

Further, the CIT(A) held that the assessing officer made an addition only on the basis of the statement of Shri Jindal and the same does not relate to the transaction of the assessee. The assessee provided services to the railways and other big companies were involved and confirmed that services were actually provided.

Further, the CIT(A) noted that there is no evidence to show that agents were related to the assessee and the commission paid has come back to the assessee and, therefore, concluded that it cannot be said that the commission paid was not genuine. With regard to the correctness of the reopening proceedings, after elaborating taking note of the facts, the CIT(A) pointed out that in the statement recorded from Shri Jindal on 29th October, 2014, he refers only to account of Axis Bank for the purpose of accounting; whereas the account from which the bank transactions were made by the assessee with M/s. Bridge & Building Construction Co. Ltd. was maintained with IDBI Bank. The factual position was re-examined by the tribunal. The tribunal pointed out that the investigation wing on the strength of the admission made by Shri Jindal, jumped to the conclusion that since the assessee had transacted with M/s. Bridge & Building Construction Co. Ltd., the assessee is a beneficiary of bogus bills. The tribunal pointed out that in the reasons recorded for reopening, nowhere the assessee's name has been specifically mentioned by Shri Jindal nor there is anything adverse against the assessee. The assessee was found to have transacted with the said company through banking channel and faulted the assessing officer for reopening the assessment based on the statement of Shri Jindal which was a general statement and that the assessing officer assumed that the assessee is a beneficiary of the account. Furthermore, the tribunal pointed out that the just because the assessee had transaction with M/s. Bridge & Building Construction Co. Ltd. it cannot be a ground to believe that the assessee's income escaped assessment. It was further held that without any other material as discussed, the conclusion drawn by the assessing officer, merely on receipt of the aforesaid information does not master the requirement of law to validly form the reason to believe escapement of income. Accordingly, the appeal filed by the revenue was dismissed.

After considering the submissions made on either side and carefully perusing the materials placed before us, we find that the entire matter is factual and the reopening itself was made on wrong presumption of facts.

Thus, we find there is no question of law much less substantial question of law arising for consideration in this appeal. Accordingly, the appeal filed by the revenue (ITAT/71/2022) fails and is dismissed.

Consequently, the connected application for stay (GA/1/2022) also stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

A.Sadhukhan/S.Das
AR(CR)