

OD-18

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

ITAT/72/2022
IA No. GA/1/2022

PRINCIPAL COMMISSIONER OF INCOME TAX 2, KOLKATA
VS.
KAUSHALYA DEALERS PVT. LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 24th November, 2022

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

Mr. S.M. Surana, Sr. Adv.
Mr. Bhaskar Sengupta, Adv.
...for the respondent.

The Court : : This appeal by the revenue filed under Section 260A of the Income Tax, 1961 (the Act, for brevity) is directed against the order dated 10th December, 2021 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA No. 419/Kol/2020 for the assessment year 2015-16.

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

"Whether in the facts and circumstances of the case, the Learned Tribunal was justified in law to hold that the revisionary powers under Section 263 of the said Act had been invalidly exercised by the Pr. Commissioner of Income Tax, ignoring the provisions of the Explanation-2 to 263 of the said Act ?"

We have heard Ms. Smita Das De, learned standing counsel appearing for the appellant/revenue and Mr. S.M. Surana, learned senior counsel assisted by Mr. Bhaskar Sengupta, learned advocate for the respondent/assessee.

The short issue which falls for consideration is whether the assumption of jurisdiction by the Principal Commissioner of Income Tax under Section 263 of the Act was justified. The learned Tribunal has pointed out that on four grounds the PCIT exercised power under Section 263 of the Act of which three issues have become academic and the only surviving issue was in respect of loss of penny stock.

On going through the order passed by the PCIT under Section 263 of the Act dated 23rd March, 2020, we find that the allegation is that the Assessing Officer has not done proper verification. To examine the correctness of the same, we have perused the paper book filed by the respondent/assessee from which we find the Assessing Officer at the first instance issued notice under Section 143(2) dated 17th March, 2016. In the said notice the assessee was directed to furnish documents and details on 10 issues of which one is pertaining to sale of shares during the financial year 2014-15. Thereafter, notice under Section 142(1) dated 9th March, 2017 was issued. In response to this notice, the assessee had submitted a reply dated 26th April, 2017 along with the details and documents in support of the transaction in shares and such other details which were called for by the Assessing Officer. Thereafter, another notice under Section 142(1) dated 2nd August, 2017 was issued calling for further information and particulars. This was furnished by the assessee by reply dated 10th August, 2017. Thereafter, the assessee had submitted an explanation on

14th August, 2017 in respect of allowability of the loss and also explained various queries raised by the Assessing Officer on the said issue. The copy of the explanation has been filed in the paper book and we find it is an elaborate explanation not only on facts but also setting out various decisions of the High Courts and that of the Tribunal contending that the loss as reported by the assessee was permissible. After such elaborate discussion of the case with the assessee, the Assessing Officer has completed the assessment. Thus, the learned Tribunal rightly held that it is not a case of 'no enquiry' or no proper verification but a detailed enquiry had been done by the Assessing Officer. The learned Tribunal has noted the factual position as put forth by the assessee before it in paragraph 6 of the order.

Thus, we are of the view that the twin conditions which are required to be fulfilled before exercising jurisdiction under Section 263 of the Act have not been fulfilled in the facts and circumstances of the case on hand.

Thus, we are of the view that no interference is called for with the order passed by the learned Tribunal.

In the result, the appeal filed by the revenue is dismissed and the substantial question of law is answered against the revenue.

Consequently, the application for stay being IA No.GA/1/2022 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)