

ITAT/78/2022  
IA No.GA/2/2022

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

PRINCIPAL COMMISSIONER OF  
INCOME TAX-2, KOLKATA

-Versus-

M/S. COSMAT TRADERS PVT. LTD.

Appearance:

*Mr. Soumen Bhattacharjee, Adv.  
...for the appellant.*

*Mr. Abhratosh Majumdar, Sr. Adv.  
Mr. Avra Mazumder, Adv.  
Mr. Binayak Gupta, Adv.  
Mr. Kausheyo Roy, Adv.  
Mr. suman Bhowmik, Adv.  
...for the respondent.*

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 15<sup>th</sup> November, 2022.

The Court: This appeal filed by the revenue under Section 260A of the Income Tax Act, is directed against the order dated 21<sup>st</sup> April, 2021 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in ITA No.457/Kol/2020 for the assessment year 2012-13.

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

- (i) *Whether the Learned Tribunal has committed substantial error in law by not considering that the assessing officer passing the assessment order has full jurisdiction of the assessee for issuing notice under Section 143(2) of the Income Tax Act, 1961 ?*
- (ii) *Whether the Learned Tribunal has committed substantial error in law so far as per Section 292BB of the Act, the jurisdiction cannot be challenged in appeal state as the assessee did not challenge the same before the lower authorities and without objection participated in the assessment proceedings accepting the notice under Section 143(2) of the Income Tax Act, 1961 a valid notice ?*
- (iii) *Whether the impugned order of the Learned Tribunal is erroneous and perverse as it failed to consider the fact that in so far as jurisdiction of the assessing officer is concerned, it is the duty of the assessee to apply and change his address in the PAN database which the assessee failed to perform ?*

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

After elaborately hearing the learned Advocates for the parties and carefully perusing the order passed by the

Tribunal, we find that the Tribunal was fully justified in allowing the assessee's appeal by taking note of the decision of this Court in the case of *Principal Commissioner of Income Tax vs. Oberoi Hotels Pvt. Ltd.* reported in [2018] 409 ITR 132 (Cal). In the said decision it was held that the notice under Section 143(2) of the Act was required to be mandatorily issued and Section 292BB had no manner of operation. The earliest of the decision is that of the Hon'ble Supreme Court in the case of *Assistant Commissioner of Income Tax & Anr. vs. Hotel Blue Moon* reported in [2010] 321 ITR 362(SC), wherein it was held that if an assessment is to be completed under Section 143(3) read with Section 158BC, notice under Section 143(2) should be issued within one year from the date of filing of the block return. Omission on the part of the assessing authority to issue notice under Section 143(2) cannot be a procedure irregularity and is not curable and, therefore, the requirement of notice under Section 143(2) cannot be dispensed with.

This Court in the case of *Principal Commissioner of Income Tax-11, Kolkata vs. Nopany & Sons* reported in 2022(2)TMI 399- Calcutta High Court held that the proviso to Section 292BB could not stand attracted and the said section cannot be made applicable to the assessee's case. Very recently, the Hon'ble Supreme Court in the case of *Assistant Commissioner of Income Tax vs. S.K. Industries* reported in [2022] 141 taxmann.com 569

(SC) dismissed the Special Leave Petition filed by the revenue against the order of the High Court holding that where the assessing officer of a particular Circle passed an assessment order under Section 143(3) without issuing notice under Section 143(2) and only in pursuance with the notice issued under Section 143(2), he had no jurisdiction over the assessee at the relevant time and such assessment order was liable to be set aside.

It is the submission of the learned standing counsel for the Department that the assessee had not raised the question of jurisdiction before the assessing officer but participated in the assessment proceedings and, therefore, could not have raised the said issue before the Tribunal.

This argument cannot be acceded to for more than one reasons, firstly, there cannot be any estoppel against the statute. It is not the case of the revenue that the assessee consciously waived his right to raise such a jurisdictional issue. Secondly, the assessee had filed an application before the learned Tribunal seeking leave to raise additional grounds and this application was held and after contest the application was allowed. The learned Tribunal, in fact, recorded that the Department could not controvert any of the submissions of the assessee on the additional grounds which have been raised and, therefore, the application was allowed taking note of the

matter that the issue goes to the root of the entire proceedings.

Thus, we are of the considered view that the learned Tribunal was fully justified in allowing the assessee's appeal. For the above reasons, the appeal filed by the revenue (ITAT/78/2022) is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the connected application for stay (IA No.GA/2/2022) also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)