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ITAT/381/2017
IA No.GA/2/2017 (Old No.GA/3690/2017)

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

PRINCIPAL COMMISSIONER OF INCOME
TAX, CENTRAL-1, KOLKATA

-Versus-

INLAND VIKASH LIMITED

Appearance:

*Mr. P. K. Bhowmick, Adv.
...for the appellant.*

*Mr. J. P. Khaitan, Sr. Adv.
Mr. P. Jhunjhunwala, Adv.
Ms. Swapna Das, Adv.
Mr. Siddhartha Das, Adv.
...for the respondent.*

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 3rd January, 2022.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 10th August, 2016 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the 'Tribunal' in short) in ITA No.900/Kol/2011 and ITA No.565/Kol/2011 both for the assessment year 2004-05.

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

(i) *Whether on the facts and in the circumstances of the case the reopening and subsequent reassessment for the A.Y. 2004-05 is not valid on the ground that "no tangible material which came into possession of the AO after conclusion of the original assessment proceedings" as has been held by the Tribunal?*

(ii) *Whether on the facts and in the circumstances of the case the reopening and subsequent reassessment for the A.Y. 2004-05 are not based on mere change of opinion?*

We have heard Mr. P. K. Bhowmick learned counsel for the appellant/revenue and Mr. J. P. Khaitan, learned senior counsel assisted by Ms. Swapna Das, learned Advocate for the respondent/assessee.

The short issue which falls for consideration is whether the Tribunal was right in setting aside the reopening of the assessment made vide order dated 11th March, 2011 under Section 143(3) read with Section 147 of the Act. On perusal of the order passed by the Tribunal, we find that the Tribunal has thoroughly analysed the factual position and noted as to the nature of transaction between the assessee and M/s. Inward Road Transport Pvt. Ltd. (IRTPL). In paragraph 8 of the order passed by the Tribunal the facts have been noticed and the Tribunal has taken note of the submission that the relevant receipt and income was embedded in such receipt and was properly taxed in accordance with law in the hands of the person entitled to such income and to whom

such income has accrued. The Tribunal took note of the decision of the Hon'ble Supreme Court in the case of Kelvinator India Ltd. reported in 320 ITR 561(SC) and held that the assessing officer has not mentioned as to how the fact that such sundry creditors, as on 31st March, 2004 shown by the assessee in the name of M/s. IRTPL were not reflected with an entry of sundry debtors in the books of M/s. IRTPL in the name of the assessee. Further, the Tribunal noted that the assessee and M/s. IRTPL are one and the same in such circumstances it cannot be said that the assessing officer had fresh tangible material after conclusion of the assessment under Section 143(3) of the Act. Further, the Tribunal on facts held that none of the reasons recorded by the assessing officer for initiating re-assessment proceedings can be said to be on the basis of the tangible material obtained after conclusion of the original assessment so as to form opinion that income chargeable to tax has escaped assessment.

Thus, we find that on facts the Tribunal was satisfied that there was no fresh tangible material to reopen the assessment under Section 147 of the Act. Thus, there is no error in the approach of the Tribunal nor the ultimate conclusion arrived at by the Tribunal warranting interference by us in this appeal.

Accordingly, the appeal (ITAT/381/2017) stands dismissed as no substantial question of law arises for consideration.

The connected application for stay (IA No.GA/2/2017) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./S.Das