O-64

ITAT/90/2022
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. SAMBUDDHA TRACON PVT. LTD.

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

Mr. J. P. Khaitan, Sr. Adv.
Mr. Soumya Kejriwal, Adv.
Mr. G. S. Gupta, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 15th November, 2022.

The Court: This appeal filed by the revenue under Section 260A of the Income Tax Act, is directed against the order dated 14th August, 2020 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in ITA No.181/Kol/2019 for the assessment year 2010-11.

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

(i) *Whether the Learned Tribunal has committed substantial error in law in quashing the reassessment order under Section 147/143(1) of the Income Tax Act, 1961 passed by the Assessing officer without disposing of the objection raised by the appellant, contrary to binding principle of law laid down in the judgment of the Hon'ble Supreme Court whereby it has been stated that non compliance of procedure would not make an order void or non est ?*

(ii) *Whether the Learned Tribunal has committed substantial error in law laid down by coming to the finding that satisfaction by the approving authority as mandates under Section 151 of Income Tax Act, was mechanical and in fact, rubber stamped and thus held that assessment is bad in law for want of recording proper satisfaction under Section 151 of the Income Tax Act, 1961 ?*

We have heard Mr. Soumen Bhattacharjee, learned standing counsel appearing for the appellant/revenue and Mr. J. P. Khaitan, learned senior counsel assisted by Mr. Soumya Kejriwal, learned Advocate for the respondent/assessee and carefully perused the materials placed on record.

On going through the following paragraphs of the order passed by the Tribunal, we find that the learned Tribunal was fully justified in granting relief to the assessee by dismissing the appeal of the revenue.

The relevant paragraphs are paras 14, 15 and 16 which are set out below :-

"14. Both on 17.03.2017 and on 27.03.2017, the AO sends separate proposals to the JCIT requesting for approval for re-opening of the assessment. The JCIT, Range-5, Kolkata vide his letter dated 29.03.2017 rejected the proposals dated 17.03.2017 and 28.03.2017 of re-opening of assessment. He also directed the AO to consider the reply of the assessee. He directed the AO not to send two separate proposals. Vide this letter dated 27.03.2017 by the ITO to the PCIT-2 bearing reference No. Ward-5(2)/Kolkata/147/2016-17/2667 speaks of approval by both, the JCIT, Range-5, Kolkata as well as the PCIT-2, Kolkata. These discrepancies could not be explained by the ld. DR.

15. Be it as it may it is absolutely clear that the objections raised by the assessee to the reasons recorded for re-opening and the re-opening itself vide its letter dated 22.11.2017 and 24.11.2017 were not disposed off by the AO. Thus the completion of assessment without disposal of these objections, makes the assessment bad in law as held in the case of Rabo India Finance Ltd. vs. DCIT (2012) 346 ITR 528 (Bombay) and in the case of Vishwanath Engineers vs. ACIT (2013) 352 ITR 549 (Gujarat). Thus this finding of the ld. CIT(A) has to be upheld.

16. Even otherwise Section 151 of the Act mandates recording of satisfaction by the approving authority. In this case the

satisfaction was mechanical and in fact a rubber stamp was used to state “Yes I am satisfied”.

The revenue could not and cannot controvert the above factual finding recorded by the Tribunal. It is clear from the finding recorded by the Tribunal that the assessing officer abdicated the statutory responsibility in not disposing of the two objections raised by the assessee for the re-opening proceedings.

Thus, we find there is no question of law much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal (ITAT/90/2022) stands dismissed.

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

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s.S.Nath