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ITAT/92/2022
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. INTENT DEALERS PVT. LTD.

Appearance:
Mr. Tilak Mitra, Adv.
...for the appellant.

Mr. Pranit Bag, Adv.
Mr. Asok Bhowmick, Adv.
... for the respondent.

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

Date : 10th November, 2022.

The Court: This appeal filed by the revenue under Section 260A of the Income Tax Act, is directed against the order dated 20th March, 2020 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA No.2179/Kol/2016 relating to the assessment year 2012-13.

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

(i) Whether the learned Tribunal was justified in quashing the order under Section 263 dated 14th March, 2019 where there is sufficient reason that the assessment order passed under Sections 263/143 sub-clause (3)

> *dated 11th July, 2016 is erroneous in so far it is prejudicial to the interest of the revenue ?*

We have heard Mr. Tilak Mitra, learned standing counsel for the appellant/department and Mr. Pranit Bag, learned counsel assisted by Mr. Asok Bhowmick, learned Advocate for the respondent/assessee.

After elaborately hearing the learned Advocates for the parties and carefully perusing the order passed by the learned Tribunal impugned in this appeal, we find that the present appeal arises out of an order passed by the Tribunal setting aside an order passed by the Commissioner under Section 263 of the Act which is a second proceedings initiated under the said provision. After the first order was passed under Section 263 of the Act, the assessing officer has conducted a *de novo* reassessment proceedings, issued summons to the directors and the shareholders as well as the assessee and examined the books of accounts, bank statement and the other documents produced by them to discharge the onus on them about the identity, creditworthiness and genuineness of the transaction and the assessing officer has recorded their statement during the reassessment proceedings where he has questioned an elucidated answer about all these factors. The learned Tribunal has elaborately discussed the factual position and noted as to how the enquiry was conducted by the assessing officer after the first order was passed under Section 263.

The learned Tribunal, after noting various decisions of the tribunal, also noted the decisions of this Court in the case of *Commissioner of Income Tax-III vs. Dataware Pvt. Ltd.* in ITAT/263/2011 dated 21st September, 2011; *Commissioner of Income Tax-IV vs. Roseberry Mercantile (P) Ltd.* in ITAT/241/2010 dated 10th January, 2011; *Commissioner of Income Tax vs. M/s. Nishan Indo Commerce Ltd.* in ITA/52/2001 dated 2nd December, 2013 and *Commissioner of Income Tax vs. M/s. Leonard Commercial (P) Ltd.* in ITAT/114/2011 dated 13th June, 2011. In all those decisions, this Court considered the similar factual issue and decided in favour of the assessee and after noting the decisions, the Tribunal has examined the factual position and granted relief to the assessee.

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/92/2022) fails and is dismissed.

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

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./S.Das.