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ITAT/103/2022
IA No.GA/2/2022

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

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-2, KOLKATA

-Versus-

M/S. SINGHAL ENTERPRISES PVT. LTD.

Appearance:
Mr. Prithu Dudheria, Adv.
...for the appellant.

Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Siddhartha Das, Adv.
Ms. Swapna Das, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE SUPRATIM BHATTACHARYA

Date : 6th September, 2022.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, is directed against the order dated 26th February, 2020 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA No.1071/Kol/2018 and ITA No.1072/Kol/2018 for the assessment years 2013-14 and 2014-15.

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

(i) *Whether the Learned Tribunal has committed substantial error in law by quashing the order passed under Section 263 of the Income Tax Act, 1961 without applying its judicial mind ?*

(ii) *Whether the Learned Tribunal has committed substantial error in law in not holding that the order passed by the Assessing Officer under Section 143(3) of the Income Tax Act, 1961 is erroneous and prejudicial to the interest of the Revenue ?*

(iii) *Whether in the facts of the case and in law the Hon'ble ITAT was correct in holding that the view taken by the Assessing Officer was not unsustainable in law, when, in fact, excess relief in contravention to Section 80IA involving the meaning of "Profit derived from business" was erroneously allowed by the Assessing Officer, causing prejudice to the Revenue ?"*

We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant and Mr. Abhratosh Majumdar, learned senior counsel assisted by Mr. Siddhartha Das and Ms. Swapna Das, learned Advocates for the respondent/assessee.

The short question involved in the instant case is whether Principal Commissioner of Income Tax, Central, Kolkata-2, (PCIT) was justified in invoking his jurisdiction under Section 263 of the Act.

We have gone through the order passed by the learned tribunal and the tribunal has taken note of the factual situation. After having appraised itself about the legal position, more particularly the decision of the Hon'ble Supreme Court in the case of *Malabar Industries Ltd. vs. Commissioner of Income Tax* reported in [2000] 243 ITR 83 (SC), the tribunal took note of the contention of the assessee that the overdraft facility has been granted on the security of the fixed deposit and, therefore, the interest on the overdraft and the interest on the fixed deposits are inter-linked. Further, the assessee has used its fixed deposits for taking overdraft facilities without encashing the fixed deposits and the interest on the overdraft has a direct nexus with interest accruing in the fixed deposit and, therefore, the interest on the overdraft has been adjusted with the fixed deposit interest and the net interest income has been shown as other income. The learned tribunal has noted that the assessing officer had enquired into this aspect and had taken one of the plausible view of netting off of interest expense with interest income, in the light of the decision of the Hon'ble Supreme Court in the case of *ACG Associated Capsules (P) ltd. vs. CIT* reported in (2012) 18 taxmann.com 137 (SC). Further, the tribunal after going through the entire records placed before it has recorded a finding that the assessing officer, after making proper enquiry and proper application of mind has framed the assessment under

Section 143(3) of the Act and, therefore, the assessment order cannot be termed to be 'erroneous' and 'prejudicial to the interest of revenue.' The tribunal also noted the settled distinction between "lack of enquiry" and "inadequate enquiry" and if it is a case of an inadequate enquiry, the law is settled that an order under Section 263 cannot be passed.

Thus, we find that the learned tribunal on analysing the factual position has 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 of the revenue (ITAT/103/2022) fails and is dismissed.

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

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

S.Das/As.