

OD – 13 & 14

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

IA NO.GA/2/2021

In

ITAT/178/2021

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL -2,
KOLKATA

VS.

M/S. ANINDITA STEELS LTD.

IA NO.GA/1/2021

In

ITAT/178/2021

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL -2,
KOLKATA

VS.

M/S. ANINDITA STEELS LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

A N D

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date: January 25, 2022.

[Via video conference]

Appearance :

Mr. Asok Bhowmik, Adv.
... for the appellant

Mr. Avra Mazumder, Adv.
..for the respondent

The Court : We have heard Mr. Asok Bhowmik, learned standing counsel for the appellant/revenue and Mr. Mazumder, learned Counsel appearing for the respondent/assessee.

There is a delay of 299 days in filing this appeal. We are satisfied with the reasons given in the affidavit filed in support of the condonation of delay petition. The delay in filing the appeal is condoned. Accordingly, the petition for condonation of delay is allowed.

ITAT 178 of 2021

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order passed by the Income Tax Appellate Tribunal “B” Bench, Kolkata (Tribunal) dated 16th September, 2020 in ITA/2225/Kol/2019 for the assessment year 2009-10.

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

1. Whether the Learned Income Tax Appellate Tribunal erred in law in holding that the order passed by the Pr. Commissioner of Income Tax, Central-2, Kolkata u/s. 263 of the Act is bad in law when the Commissioner exercised his revisionary power after satisfying himself about the facts of the case?
2. Whether the order of Learned Income Tax Appellate Tribunal erred in forming the opinion based on the date of issue of notice u/s 143(2) of the Income Tax Act, 1961 on 24.02.2016 instead of actual issuing date

on 31.03.2016 and invalidating the said notice and assessment order?

We have heard Mr. Asok Bhowmick, learned Standing counsel for the appellant/revenue, Mr. Mazumder, for respondent/assessee.

The short issue which falls for consideration is whether the Principal Commissioner of Income Tax, Central Calcutta (PCIT) was justified in invoking its power under Section 263 of the Act. The Tribunal considered the factual issue and more particularly the fact that on the very same issue the assessment was reopened under Section 147 of the Act and after discussing the case and conducting an enquiry relief was granted to the assessee.

In spite of such being the factual position, the PCIT proposed to revise the reassessment order dated 20th May, 2016 by issuing show-cause notice dated 8th March, 19 on the same issue. The Tribunal after considering the factual issue held as follows :

“From the above it is clear that reasons recorded for reopening of the assessment and the reason for initiating proceedings u/s 263 of the Act, are the same and based on the same material. The allegation in this showcause notice issued u/s 263 of the Act, is that the Assessing Officer has failed to examine and that no enquiry was conducted into the veracity of the loans by the Assessing Officer, is factually incorrect. It is well settled that inadequate enquiry cannot be a ground for exercising of revisionary power u/s 263 of the Act. It is for the

Assessing Officer to determine the extent of enquiry and investigation to be done on a particular issue. From the papers on record it is clear that the Assessing Officer had conducted enquiries both with the assessee as well as with the third parties and on receipt of all the information, copies of which are placed from pages 43 to 72 of the paper book, has accepted these loans as genuine. The Id. Pr. CIT cannot substitute his opinion for that of the Assessing Officer. It is also seen that the Id. Pr. CIT has not conducted any verification or *prima facie* investigation on his own to come to a conclusion that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of the revenue. He also failed to notice that enquiries were in fact made by the Assessing Officer.”

Furthermore, the Tribunal rightly took note of the law laid down by the Hon’ble Supreme Court in Malabar Industrial Company Ltd. Vs. CIT; (2000) 109 TAXMAN P.66 and allowed the appeal filed by the assessee. In the said decision the Hon’ble Supreme Court pointed out that the phrase “prejudicial to the interest of revenue” occurring in Section 263 of the Act has to be read in conjunction with the expression “erroneous” order passed by the assessing officer. Further every loss of revenue as a consequence of an order of the assessing officer cannot be treated as prejudicial to the interest of the revenue. In the case at hand the Tribunal rightly pointed out that the ground on which notice under Section 263 of the Act was issued was identical to the reason for reopening the assessment earlier. Furthermore, the

Tribunal noted that no independent enquiry was conducted by the PCIT to justify assumption of jurisdiction under Section 263 of the Act. It is settled legal principle that the PCIT cannot substitute its opinion to that of the assessing officer on the same material which was noted by the assessing officer in the reassessment proceeding. Thus, we find that the Tribunal rightly granted relief to the assessee.

In the result, the appeal is dismissed and the substantial questions of law are answered against the revenue.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

RS/GH