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

ITAT/145/2022
IA No.GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX -2, KOLKATA
VS.
M/S. OSL DEVELOPERS PRIVATE LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 16th November, 2022

<u>Appearance</u> :
Ms. Smita Das De, Adv.
...for the appellant.

Mr. S. M. Surana, Sr. Adv.
...for the respondent.

The Court : This appeal by the revenue filed under Section 260A of the Income Tax, 1961 (the Act, for brevity) is directed against the order dated 3rd December, 2020 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA No.1909/Kol/2017 for the assessment year 2008-09.

On perusal of the substantial questions of law suggested by the revenue, we find that those questions are irrelevant and are entirely factual as the question of law which may arise for consideration in this appeal would be as to, "Whether the order passed by the Assessing Officer namely the Income Tax Officer, Ward-5 (III), Kolkata in pursuance of the direction issued under Section 263 of the Act is devoid of jurisdiction?"

Accordingly, the substantial question of law suggested is re-framed on the above terms.

We have heard Ms. Smita Das De, learned standing counsel appearing for the appellant/revenue and Mr. S.M. Surana, learned senior counsel for the respondent/assessee.

On perusal of the order passed by the learned Tribunal, we find that the learned Tribunal had given elaborate reasons to hold that the order passed by the Assessing Officer is without jurisdiction. Paragraph 9 of the order of the learned Tribunal reads as follows:-

> *"9. In the light of the above discussion, let us examine the facts involved in the appellant's/assessee's case and ascertain whether the ITO, Ward-5(3), Kolkata enjoyed jurisdiction over the appellant's case so as to enable him to frame reassessment order dated 25.03.2014 u/s. 263/143(3) for the AY 2008-09. As noted, the jurisdiction over the appellant's case initially was vested with the ITO Ward-5(3) Kolkata, since the territorial jurisdiction over area or limits of area, where assessee's principal office of business was situated. The vesting of jurisdiction with the said officer was in terms of the order/direction of the CBDT u/s. 120(1) of the Act or by Income Tax Authorities (sec. 116) who were delegated the powers to issue orders/directions vesting the jurisdiction of assessment over the authorities subordinate to it. The said Assessing Officer [ITO-ward 5(3)] enjoyed jurisdiction over the appellant upto 28.08.2012. Thereafter, by virtue of order passed by the Ld. CIT-II, Kolkata dated 28.08.2012 u/s. 127(2), the said AO i.e. ITO, Ward-5(3), Kolkata was divested of his jurisdiction over the appellant and the jurisdiction stood transferred in favour of DCIT, Central Circle-XVII, Kolkata..."*

The above factual finding could not be controverted by the revenue before us in this appeal. When it is an admitted fact that the Assessing Officer, namely, the Income Tax Officer, Ward 5(III) was divested of the jurisdiction on or after 28th August, 2012, the order passed under Section 263 of the Act could not have been given effect to.

Further, the learned Tribunal has assigned the following reason which, in our opinion, is both factually and legally correct. The same is quoted hereinbelow:-

> *"In our opinion in the facts of this case, once the order u/s 127(2) was passed on 28.08.2012 by the Ld. CIT-II, Kolkata unconditionally transferring the jurisdiction over the appellant's case to the charge of DCIT/ACIT, Central Circle-XVII, Kolkata; then by virtue of such an order, the jurisdiction enjoyed by ITO, Ward-5(3), Kolkata in terms of Section 124 read with Section 120(1) & (2) stood abrogated."*

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

Accordingly, the appeal fails and is dismissed.

Consequently, the application for stay being IA No.GA/2/2022 also is dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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