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

ITAT/186/2022
IA No: GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX 2, KOLKATA
VS.
NAGA DHUNSERI GROUP LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 18th November, 2022

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

Mr. Asim Choudhury, Adv.
Mr. Soham Sen, 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 27th January, 2021 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata in ITA No. 370/Kol/2020 for the assessment year 2015-16.

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

"i) Whether on the facts and the circumstances of case the Learned Income Tax Appellate Tribunal is justified in quashing the order under section 263 of the Act passed by Pr. Commissioner of Income Tax-2, Kolkata ?

ii) Whether on the facts and circumstances of the case and in law Learned Income Tax Appellate Tribunal is justified in allowing the appeal of assessee on account of the issue of disallowance under section 14A which was not the reason for the selection of the case for limited scrutiny ?

iii) Whether on the facts and circumstances of the case and in law Learned Income Tax Appellate Tribunal is justified in not appreciating the facts that one of the reasons for selection of the case for limited scrutiny was to verify the introduction of capital in NBFC/Investment Companies which is connected with the issue of disallowance under section 14A of the Income Tax Act, 1961 ?"

We have heard Ms. Smita Das De, learned standing counsel appearing for the appellant/revenue and Mr. Asim Choudhury, learned counsel for the respondent/assessee.

The short question involved in this case is whether the assumption of jurisdiction by the Principal Commissioner of Income Tax under Section 263 of the Act was justified. The learned Tribunal has analysed the factual position and found that the case of the assessee was selected for limited scrutiny under CASS and the issue which the Commissioner sought to reopen namely, the issue of disallowance under Section 14A of the Act, read with Rule 8D in respect of the exempt income was not one of the issues which was selected for scrutiny. The learned Tribunal in paragraph 2 of its order has set out the three items which have been selected for scrutiny namely, i) Introduction of capital in

NBFC/investment company; ii) large deduction claimed u/s. 57 of the Act; and iii) Mismatch of amount paid to related persons u/s. 40A(2)(b) reported in audit report and ITR.

If that is the undisputed factual position, we find the reasoning given by the learned Tribunal is fully justified. That apart, the learned Tribunal has rightly pointed out that the CBDT has issued instructions as to the manner in which the limited scrutiny should be carried out. In CBDT Instruction No.7 of 2014, dated 26th September, 2014, the relevant portion of the said Instruction reads as follows :-

> "3. The reason(s) for selection of cases under CASS are displayed to the Assessing Officer in AST application and notice u/s 143(2), after generation from AST, is issued to the taxpayer with the remark "Selected under Computer Aided Scrutiny Selection (CASS)". The functionality in AST is being modified suitably to flag the reasons for scrutiny selection in AIR/CIB/26AS cases. This functionality is expected to be operationalised by 15th October, 2014. Further, the Assessing Officer while issuing notice under section 142(1) of the Act which is enclosed with the first questionnaire would proceed to verify only the specific aspects requiring examination/verification. In such cases, all efforts would be made to ensure that assessment proceedings are completed expeditiously in minimum possible number of hearings without unnecessarily dragging the case till the time-barring date."

A bare reading of the of the above Instruction clearly shows that the PCIT cannot make a roving enquiry in the guise of a limited scrutiny and as such the instruction issued by the CBDT is binding on the Department.

Thus, we find that on facts the learned Tribunal has granted relief in favour of the assessee.

The learned counsel appearing for the respondent points out that the PCIT in its order has relied upon a decision of the Learned Single Bench of the High Court of Kerala in the case of Sunrise Academy of Medical Specialities (India) Pvt. Ltd. vs. ITO Corporate Ward 2(1), Range-2, Kochi reported in WP(C) No.3485 of 2018 dated 22.05.2018.

On a reading of the said order, we find that the said order supports the case of the assessee rather than the revenue. Thus, we find there is no question of law much less 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.)

s.pal/SN.