

OD – 1

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

ITAT/209/2022
IA NO. GA/1/2022
PRINCIPAL COMMISSIONER OF INCOME TAX –1, KOLKATA
Versus
M/S. SPML INFRA LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Dated : NOVEMBER 16, 2022.

Appearance:
Mr. Prithu Dudhuria, Adv.
...for appellant
Mr. J.P. Khaitan, Sr. Adv.
Mr. Saumya Kejriwal, Adv.
Mr. G.S. Gupta, Adv.
...for respondent

The Court :- This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated April 27, 2022 passed by the Income Tax Appellate Tribunal 'A' Bench, Kolkata (Tribunal) in ITA No. 510/Kol/2021 for the assessment year 2017-2018. The revenue has raised the following substantial questions of law for consideration :

- A) WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in deciding the appeal against the Revenue by holding that the Assessment Order dated

December 26, 2019 is neither erroneous nor prejudicial to the interest of the Revenue ?

B) WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal is justified in adjudicating that the Pr. CIT erred in assuming jurisdiction under Section 263 of the Income Tax Act, 1961 ?

We have heard Mr. Prithu Dudhoria, learned standing Counsel for the appellant and Mr. J.P. Khaitan, learned Sr. Counsel duly assisted by Mr. Saumya Kejriwal, learned Advocate for the respondent.

The short question involved in the instant matter is whether the Principal Commissioner of Income Tax, Kolkata I (PCIT) was justified in invoking his power under Section 263 of the Act. On a reading of the order passed by the PCIT dated 6th October, 2021 we find that the only ground on which the power was exercised by stating that the Assessing Officer has passed the assessment order without making enquiry and verifications which should have been done in the assessee's case. Therefore, the PCIT would state that clause (a) and (b) of explanation 2 to Section 263(1) is attracted and the assessment order was held to be erroneous.

Aggrieved by such order the assessee preferred appeal before the Tribunal which has been allowed by the impugned order. Firstly, we need to consider as to whether the findings recorded by the PCIT that no enquiry was conducted is factually correct. In the order passed by the PCIT dated 6th October, 2021 in paragraph 4 the reply given by the assessee to the show cause notice issued

under Section 263 of the Act has been extracted in its entirety. From the said reply it is seen that the assessing officer during the course of assessment had raised the very same query regarding the computation of capital gain by issuing notice under Section 142(1). To be precise, said issue was raised in point Nos. 12 and 24 of the said notice. The assessee had filed two written submissions dated 18th November, 2019. In addition to the same the assessing officer issued another show cause notice on 30th October 2019 requiring further explanation of the sale consideration to Rs.12,16,11,857/- shown on account of sale of the said asset. The assessee had filed the reply vide letter dated 25th November, 2019 once again explaining the computation of capital gain as done by them. After considering the submission made by the assessee to all the notices issued by the Assessing Officer the computation of capital gain as done by the assessee was accepted by the Assessing Officer. That apart the assessee has also reckoned the findings recorded by the PCIT alleging that the computation of capital gain is prejudicial to the interest of revenue. The assessee has submitted all details in a tabulated form and has demonstrated that if the view taken by the PCIT is to be accepted it would result prejudice to the interest of revenue. Unfortunately, the PCIT though extracted the elaborate submissions made by the assessee to the show-cause notice issued under Section 263 of the Act, has not dealt with any of the contentions raised but merely concluded that the assessing officer has not made due enquiry. This aspect of the matter is factually incorrect, as the PCIT has committed a serious error in assuming jurisdiction under Section 263 of the

Act. The learned Tribunal has re-appreciated the facts and circumstances and has held that the assessing officer did conduct enquiry, which in our opinion was an elaborate enquiry conducted by the assessing officer. That apart the Tribunal had also considered the calculation of capital gain in the manner observed by the PCIT and has recorded a categorical factual finding that if the said method is adopted it will be prejudicial to the interest of revenue.

Thus we find that the learned Tribunal rightly granted relief to the assessee and we find no question of law, much less substantial question of law arises for consideration in this appeal.

Accordingly, the appeal fails and dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)