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ITAT/220/2022
GA/2/2022

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA

-Versus-

BHUBANESHWARI DEVELOPERS PVT. LTD.

Appearance:
Mr. Tilak Mitra, Adv.
Mr. Soumen Bhattacharya, Adv.
...for the appellant.

Mtr. Jawed Ahmed Khan, Adv.
Mr. Talha Ahmed, Adv.
Mr. Bhaskar Sengupta, Adv.
.. . for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 6th December, 2022.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, is directed against the order dated 3rd February, 2021 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in ITA No.2520/Kol/2019 for the assessment year 2012-13.

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

(i) *Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in holding that the notice under Section 143(2) of the Income Tax Act, 1961 issued by the DCIT, Circle-1, Kolkata, was bad in law without considering the fact that the Assessee did not raise any question/objection regarding the jurisdiction of the Assessing Officer issuing that notice within the limitation period of raising such question/objection as provided under Section 124(3)(a) of the Income Tax Act i.e., within one month of the service of the impugned notice under Section 143(2) issued by the DCIT, Circle-1, Kolkata and not even during the assessment proceedings and such objection was raised by assessee for the first time only much later before Commissioner of Income Tax (Appeals) on or around 13.09.2019, i.e., long after the completion of the assessment under Section 143(3) of the Act on 29.03.2015 ?*

(ii) *Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in holding that, as per income criterion fixed vide CBDT instruction no.1/2011, the jurisdiction of the case of the assessee should have been with an Income Tax Officer (ITO) because the total income declared in the return of income for*

> *the Assessment Year 2012-13 was only Rs. 13,240/- and the upper limit for corporate cases to be assessed by ITOs was Rs. 30,00,000/-, and therefore notice under Section 143(2) of the Act issued by the DCIT, Circle – 1, Kolkata without recognising that departure of administrative orders cannot be taken as ground to nullify the assessment was bad in law ?*

We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue and Mr. Jawed Ahmed Khan, learned counsel assisted by Mr. Talha Ahmed and Mr. Bhaskar Sengupta, learned Advocates for the respondent/assessee.

The short question involved in the instant case is whether the notice required to be issued under Section 143(2) was issued. The Tribunal has referred to a remand report submitted by the Assessing Officer wherein the Department could not controvert the contention made by the assessee that no notice under Section 143(2) of the Act was issued by the Deputy Commissioner of Income Tax, Circle-13(1), Kolkata who completed the assessment. Further, the Tribunal has also noted the relevant decisions and rightly held that the assessment order is bad in law for the reason that the Assessing Officer passed the order under Section 143(2) of the Act without issuing any notice 143(2). We find that there is no substantial question of law arising for consideration in this appeal.

Accordingly, the appeal [ITAT/220/2022] fails and is dismissed.

Consequently, the connected application [GA/2/2022] stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/As.