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ITAT/221/2022
GA/2/2022

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

PRINCIPAL COMMISSIONER OF
INCOME TAX-5, KOLKATA

-Versus-

BHAGYALAXMI CONCLAVE PVT. LTD.

Appearance:
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.2517/Kol/2019 for the assessment year 2012-13.

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

(i) *Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in overturning the decision of CIT(A) who upheld the order of Assessing Officer, by relying on an administrative instruction no.1/2011 of CBDT and treating the order of assessment as bad in law giving rise to a perversity of fact and leading to a substantial question of law being raised even though notice under Section 143(2) of the Income Tax Act, 1961 was duly issued and served upon the assessee ?*

(ii) *Whether the Learned Income Tax Appellate Tribunal has committed substantial error in law in deciding that the authority who passed the assessment order under Section 143(3) of the Income Tax Act, 1961 should have issued a notice under Section 143(2) of the Act, which is not substantiated by any provisions of the Income Tax Act, 1961 thereby giving rise to a substantial question of 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/221/2022] fails and is dismissed.

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

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/As.