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

ITAT 4/2023
IA No: GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX 2, KOLKATA
VS.
KARAN POLYMERS PVT. LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 27th February, 2023

Appearance :
Mr. Prithu Dudhoria, Adv.
....for appellant

Mr. Kapil Goel, Adv.
Mr. Rites Goel, Adv.
... for respondent

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 6th April, 2022 passed by the Income Tax Appellate Tribunal, 'A' Bench, Kolkata (Tribunal) in I.T.A No. 270/Kol/2021 for the assessment year 2011-12.

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

"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

revisionary powers under Section 263 of the Income Tax Act, 1961 had been invalidly exercised by the Learned Pr. CIT-2 in this case, without considering the fact that the provisions of the Explanation 2 to Section 263 of the Income Tax Act, 1961 ?"

We have heard Mr. Prithu Dudhoria, learned standing counsel appearing for the appellant and Mr. Kapil Goel, learned counsel for the respondent.

The short issue involved in the instant case is whether the assumption of jurisdiction by the Principal Commissioner of Income Tax, Kolkata-2 (PCIT) under Section 263 of the Act was justified.

The learned Tribunal has passed an elaborate order, firstly taking note of the legal position under what circumstances the power under section 263 of the Act could be invoked. The Tribunal referred to the decision of the Hon'ble Supreme Court in *Malabar Industrial Co. Pvt. Ltd. vs. CIT, (2000) 243 ITR 83* and the decision in the case of *CIT vs. Max India Limited, 295 ITR 0282* and the other decisions of the various High Courts and then proceeded to examine the factual aspect. The learned Tribunal noted that the issue based on which the PCIT assumed jurisdiction under Section 263 of the Act was the very same issue which was the subject matter of the reopening proceedings which was done by the Assessing Officer under Section 148 of the Act. The learned Tribunal also noted that the assessee had filed a detailed submission to the reopening proceedings by reply dated 2nd August, 2018 and records were placed before the Assessing Officer in the form of a paper book and after examining all the documents the Assessing Officer was satisfied that the assessee had not entered into any bogus/accommodation entry/transaction with the party in question and there is no element of undisclosed income.

Thus, in our considered view, the learned Tribunal rightly applied the legal position and also took note of the facts and held that the power under Section 263 of the Act could not have been invoked.

Thus, we find that no question of law, much less substantial question of law, arises for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

The stay application being IA No: GA/2/2023 is also dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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