OD-8

ITAT/32/2023
IA No.GA/1/2023

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

PRINCIPAL COMMISSIONER OF
INCOME TAX-1, KOLKATA

-Versus-

M/S. SAMAYAK SALES PVT.LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 15th March, 2023

Appearance :
Mr. Prithu Dudheria, Adv.
...for the appellant

Mr. Pranit Bag, Adv.
Mr. Taraknath Jaiswal, Adv.
Mr. Subhamay Patra, Adv.
...for the respondent.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 19th July, 2022 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in ITA No.147/Kol/2021 for the assessment year 2011-12.

The revenue has raised 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 quashing the order passed by the Pr.CIT-I, under Section 263 of the Income Tax Act, 1961 without considering the fact that the order passed by the Assessing Officer is erroneous and prejudicial to the interest of revenue ?*

(ii) *Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in deleting the addition of Rs.5,61,375/- made by the Pr.CIT-I, under Section 68 of the Income Tax Act, 1961 amount received on account of sale of shares of M/s. S.V. Electricals Ltd. (now, M/s. Nvyah Infrastructure and Telecom Services Ltd.) ?*

Learned counsel for the respondent is granted leave to file vakalatnama by 16th March, 2023.

We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue and Mr. Pranit Bag, learned counsel assisted by Mr. Taraknath Jaiswal and Mr. Subhamay Patra, learned Advocates for the respondent/assessee.

The short issue which falls for consideration in the instant case is whether the assumption of jurisdiction by the Principal Commissioner of Income Tax under Section 263 of the Act was valid and legal. The Tribunal considered the factual position and found that very same issue was the subject-matter of re-assessment proceedings and during the re-assessment proceedings the Assessing Officer considered the documents and no addition was made on the issue raised for the reasons recorded for exercising power under Section 263 of the Act. Therefore, the learned Tribunal came to the conclusion that since in the re-assessment proceedings no addition was made on the said ground, the same cannot be the subject-matter of revision under Section 263 of the Act. The finding rendered by the Tribunal is perfectly valid and legal and calls for no interference.

For the above reason, the appeal (ITAT/32/2023) filed by the revenue is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the connected application for stay (IA No.GA/1/2023) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

As./AKG.