

OD-9

ITAT/39/2023
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. SHREE SHOPPERS LTD.

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

Appearance :
Ms. Smita Das De, Adv.
...for the appellant.

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 8th September, 2022 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA No.865/Kol/2018 for the assessment year 2012-13.

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

- (i) *Whether on the facts and circumstances of the case the Tribunal was justified in law to quash the Assessing Order passed under Section 143(3) of the said Act on the ground that the*

valid Notice under Section 143(2) was not issued in accordance with law despite the fact that said Notice was already issued by the jurisdictional Assessing Officer before the process of Restructuring Departmental Cadre ?

- (ii) Whether on the facts and circumstances of the case the Tribunal was justified in law in not appreciating the fact that the Notice under Section 143(2) of the said Act is issued only once at the time of initiating of the scrutiny assessment, thereafter mere change of jurisdictional Assessing Officer within the same Range and/or Pr.CIT cannot affect the assessment proceedings ?*

We have heard Ms. Smita Das De, learned standing counsel for the appellant/revenue. Though the respondent has been served and affidavit of service filed, none appears for the respondent.

The short issue which falls for consideration in the instant case is whether there is valid notice issued under Section 143(2) of the Act for commencing the scrutiny assessment. The Tribunal has noted the facts and rendered a finding that on the date when the case was selected for scrutiny, the authority who issued the notice namely, the Income Tax Officer, Ward No.9(4), Kolkata did not have jurisdiction and the jurisdiction was with the Deputy

Commissioner of Income Tax. The following factual finding has been recorded by the Tribunal :

"Therefore, the legal ground stands to be admitted and the same relates to invalid notice issued u/s. 143(2) of the Act. It is a settled position of law that for carrying out the assessment proceedings u/s. 143(3) of the Act, the statutory requirement of serving of valid notice u/s. 143(2) of the Act is must and in absence thereof the subsequent proceedings become invalid. In the case of assessee, the facts are that the assessee has declared income of Rs.48,47,180/- in the e-return filed on 26.09.2012. For selecting the case for scrutiny notice u/s. 143(2) of the Act was issued by ITO, Ward-9(4), Kolkata dated 23.09.2013. The Central Board of Direct Taxes (CBDT vide Instruction No.1/2011 supra) revised the monetary limit for issuing notice by ITO/DCs/ACs. Through this instruction it stated that in case of metro cities in case of corporates declare income above Rs.30 lakh the jurisdiction of such corporate assessee will lie with the DCs/ACs. It is not in dispute that as on the date of selecting the case for scrutiny, the very basis for having jurisdiction over the assessee is the returned income which was more than Rs.30 lakhs and the same was lying with the DCs/Acs but the notice u/s. 143(2) of the Act has been issued by ITO, Ward-9(4), Kolkata. It is true that subsequently the assessment has been framed by

DCIT, Circle-9(2), Kolkata but the point in dispute is that on date of issuing a notice u/s. 143(2) of the Act, whether the ITO, Ward-9(4), Kolkata was having a valid jurisdiction to issue such notice u/s. 143(2) of the Act."

The above factual position recorded by the Tribunal is not in dispute. Therefore, we are of the clear view that the Tribunal rightly allowed the assessee's appeal and quashed the scrutiny proceedings as defect in issuance of notice is incurable as it goes to the root of the matter.

Thus, we find no ground to differ with the findings recorded by the learned Tribunal.

In the result, the appeal filed by the revenue (ITAT/39/2023) is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the connected application for stay (IA No.GA/2/1/2023) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)