

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

ITAT/49/2023
IA NO: GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX 1, KOLKATA
VS.
M/s. SPPL PROPERTY MANAGEMENT PVT. LTD.

BEFORE :
THE HON'BLE T.S. SIVAGNANAM ACTING CHIEF JUSTICE
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 31st March, 2023

Appearance :
Mr. Prithu Dudhuria, Adv.
...for appellant
Mr. Pratyush Jhunhunwala, Adv.
Mr. Mrigank Kejriwal, Adv.
...for respondent

The Court : - We have heard Mr. Prithu Dudhuria, learned Standing Counsel for the appellant and Mr. Pratyush Jhunhunwala, learned Advocate appearing for the respondent/assessee. There is a delay of 64 days in filing the appeal.

We have perused the affidavit filed in support of the petition and we find sufficient cause has been shown for not preferring the appeal within the period of limitation. Accordingly, the application is allowed and the delay in filing the appeal is condoned.

This appeal is filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated July 19, 2022 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA No. 520/Kol/2021 both relating to the Assessment Year 2017-2018.

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

- (a) 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-1 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 ?

- (b) WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in disposing the appeal without considering that air conditioner expenses its capital in nature and is not allowable as expenses ?
- (c) WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in disposing the case without considering that delay in payment of employees contribution to P.F. & other welfare funds under Section 36(1)(va) of the Income Tax Act, 1961 is not an allowable expense if the contribution deposited beyond the due date of next month in the light of the judgment of the Hon'ble Supreme Court in Civil Appeal No. 2833 of 2016 in the case of Chekmate Services P. Ltd. Vs.CIT ?

The first issue to be considered in the instant case is whether the Principal Commissioner of Income Tax was justified in invoking his jurisdiction under Section 263 of the Act. The assessment under Section 143(3) of the Act was completed by order dated 19.11.2019. The PCIT initiated proceedings under Section 263 of the Act stating that the provisions for doubtful debts amounting to Rs.1,05,24,671/- was not disallowed at the time of assessment since provision for expenses is not allowable under Section 37(1) of the Act. Secondly the PF contribution received from the employees was not deposited to concerned account in due date and the amount should have been added to the total income of the assessee under Section 36(1)(va) of the Act. Further an amount was debited to the profit and loss account under the head "Air Conditioner Expenses" which being capital in nature is not allowable expenses and are required to be added back to the total income of the assessee. Therefore, the PCIT was of the view that the assessment was erroneous in so far as it was prejudicial to the interest of

revenue. The assessee submitted the reply to the show-cause notice on 23.9.2021. The PCIT rejected the explanation offered and confirmed the proposal in the show-cause notice, set aside the order of assessment and directed the assessing officer to pass a fresh assessment order after considering the issues mentioned in the order dated 8th November, 2021.

Aggrieved by the same, the assessee preferred appeal before the Tribunal. As pointed out earlier, the PCIT invoked his jurisdiction under Section 263 of the Act on three issues namely, provisions for doubtful debts, employees' contribution of provident fund and air-conditioner expenses.

Before we go into the three heads, under which action was initiated under Section 263 of the Act, we have to first examine as to whether the assumption of jurisdiction by the PCIT under Section 263 was just and proper. With regard to the first and third issues, the assessing officer had issued notice under section 142(1) on 1st of May, 2019 and issued a questionnaire form and the assessee had submitted all the relevant details which have been noted by the Tribunal. Further, there is another question with regard to the details of expenses head-wise, where assessee had deducted tax at source. The Tribunal on going through the assessment records found that the questionnaire on the issues raised by the assessing officer called for the details of expenses appearing in the audited P & L Account and various replies filed by the assessee and the Tribunal found that the assessing officer has specifically carried out an enquiry regarding provisions for doubtful debts and air-conditioner expenses and the specific reply given by the assessee was also taken note of. With regard to the issues regarding the provisions for doubtful debts, the Tribunal noted that the assessee during the regular course of business as claimed to have been shown sales, in the preceding years of which, some sales turned bad and the same has been written off in the books of accounts as bad debts which the assessee is entitled for and, therefore, found the claim to be admissible. Similarly, for air-conditioner charges the assessee had filed complete details along with tax deducted on the charges paid and the bills were also placed in the

form of a paper book which the Tribunal perused and found the same to be acceptable. Thus, the Tribunal concluded that on both these issues, namely with regard to the provisions for doubtful debts and air-conditioner expenses, the assessing officer had conducted a detailed enquiry and thereafter completed the assessment. Secondly, it was held that the PCIT had erred in invoking the revisional jurisdiction under Section 263 of the Act. The law on the subject is well settled, that if it is found, that the assessing officer has in fact conducted an enquiry, merely because the PCIT is of a different opinion, it would not justify action under Section 263 of the Act. The other issue with regard to the provident fund contribution, as mentioned, the assessment order was of the year 2017-18 and on the date, when the assessing officer completed the assessment, the law on the subject as laid down by the jurisdictional High Court, namely this Court is in the case of *Commissioner of Income Tax Circle – 1, Kolkata Vs. Vijay Shree Ltd.* [2014] 43 taxmann.com 396 (Calcutta). Thus the assessing officer had followed the decision of this Court in the said case and had completed the assessment. Thus the assessing officer having followed the decision of the Jurisdictional High Court which held the field, at the relevant point of time, the assessment cannot be held to be prejudicial to the interest of revenue.

Thus, we are of the view that the learned Tribunal had rightly granted relief to the respondent/assessee.

In the result, the appeal fails and is dismissed. The substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE)

(HIRANMAY BHATTACHARYYA, J.)