OD – 6

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction

ORIGINAL SIDE

ITAT/58/2023
IA NO.GA/1/2023,
GA/2/2023

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL – 1, KOLKATA

-Versus-

M/S. GREEN TOUCH VINCOM PVT. LTD.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 12th July, 2023

<u>*Appearance :*</u>
Mr.Om Narayan Rai, Adv.
Mr.Amit Sharma, Adv.
..for the appellant.

Ms. Jayati Chowdhury, Adv.
....for the respondent.

The Court : We have heard Mr. Om Narayan Rai, learned senior standing counsel assisted by Mr.Amit Sharma, learned junior standing counsel for the appellant/revenue and Ms.Jayati Chowdhury, learned counsel for the respondent/assessee.

There is a delay of 734 days in filing the appeal. Though the explanation offered for delay is not convincing since the question of law suggested in this appeal by the appellant/revenue is covered by an earlier decision of this Court, we exercise our discretion and condone the delay in filing the appeal. Accordingly, the delay in filing the appeal is condoned and the application [GA/1/2023] stands allowed.

This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (for brevity, the Act) challenging the order dated 10th September, 2020 passed by the Income Tax Appellate Tribunal, B- Bench, Kolkata (the Tribunal) in ITA No.1028/Kol/2018 for the assessment year 2013-14.

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

(i) *Whether in the Hon'ble Income Tax Appellate Tribunal has committed substantial error in law in quashing the order under Section 263 of the Income Tax Act, 1961 when it is apparent from the records that the assessment order was erroneous and prejudicial to the interest of the Revenue inasmuch as the same had been passed by the assessing officer without making due and proper enquiry and without verification of the aspect of genuineness of the purchases and expenditure which the Assessing Officer himself had found to be inflated?*

(ii) *Whether the Hon'ble Tribunal has substantial erred in law in deciding the instant case by placing reliance on the co-ordinate benche's order in case of Kartick Bose (ITA No.1027/Kol/2018) ignoring the fact that the said case has not been attained finality?*

We have heard Mr. Om Narayan Rai, learned senior standing counsel assisted by Mr.Amit Sharma, learned junior standing counsel for the appellant/revenue and Ms.Jayati Chowdhury, learned counsel for the respondent/assessee.

The second substantial question of law which has been raised for consideration points out that the learned Tribunal had erred in deciding the issue in favour of the assessee by placing reliance on the order of the learned Tribunal in ITA

No.1027/Kol/2018. The said order was challenged by the appellant/revenue in ITAT No.115/Kol/2021 and by the judgment and order dated 8th July, 2022 the appeal was dismissed. The operative operation of the judgment is reads as follows :

> "*The assessee preferred appeal before the tribunal. The tribunal, in our view, rightly took note of the decision of the Hon'ble Supreme Court in Malabar Industrial Co. Ltd. Vs. Commissioner of Income Tax, reported in (2000) 243 ITR 83 (SC) and Commissioner of Income Tax Vs. Max India, reported in (2007) 295 ITR 282 (SC) and proceeded to examine the facts of the case. The tribunal noted that there was no dispute with regard to the assessee's sale and purchase figures between the group concerns which has been accepted by the assessing officer who proceeded to disallow an estimated 5% of the inflated amount. Considering the factual position the tribunal held that the twin conditions required to be satisfied for invoking Section 263 of the Act was absent and, therefore, the assumption of jurisdiction by the PCIT was held to be bad in law. We note that the PCIT while invoking his power under Section 263 of the Act has proceeded based on conjecture and there is no finding recorded that the books of accounts of the assessee were rejected. Furthermore, the specific issue raised by the assessee that the documents and details were furnished before the assessing officer was not found to be incorrect. Therefore, we are of the view that the tribunal having taken note of the factual position had rightly interfered with the order passed by the PCIT. The learned standing counsel for the appellant placed reliance on the decision of the High Court of Gujarat at Ahmedabad in N.K. Industries Ltd. Vs. Dy. CIT in Tax Appeal No.240 of 2003 etc. dated 20th June, 2016. This decision is referred to since the decision in Vijay Proteins Ltd. has been relied upon in the said case.*
>
> *We find that the decision in Vijay Proteins Ltd. is distinguishable on facts since in the said case it was conclusively found that the entire purchases were shown to be based on fictitious invoices and have been debited in trading account and the entire transaction was held to be bogus. Furthermore, it was pointed out that the tribunal had come to a categorical conclusion that the amount of Rs.2,95,93,288/- representing alleged purchase from bogus suppliers and,*

therefore, it was held that the tribunal could not have restricted the disallowance only to Rs.73,23,32/-. Thus, there was a factual adjudication in the said case and the order passed by the tribunal was faulted for rejecting the disallowance. The decision is distinguishable on facts and cannot in any manner advance the case of the appellant before us.

For the above reasons, we find that there is no question of law much less substantial question of law arises for consideration in this appeal".

Thus, following the above decision, the appeal filed by the revenue is dismissed and we find no substantial question of law arises for consideration in this appeal.

Consequently, the application [GA/2/2023] stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das/