OD–18

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

ITAT/80/2023
IA NO: GA/1/2023

PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA
VS.
M/s. KAMLESH TRADE AND AGENCY PVT. LTD.

BEFORE :
THE HON'BLE T.S. SIVAGNANAM ACTING CHIEF JUSTICE
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 10TH APRIL, 2023.

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

The Court :- This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961(the Act) is directed against the order dated 31.01.2022 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata in I.T.A. No. 100/Kol/2021 for the assessment year 2015-16. The revenue has raised the following substantial questions of law for consideration :-

i) Whether in the facts and in the circumstances of the case the Tribunal was justified in law in allowing the appeal of the assessee on the ground that the Order passed under Section 263 of the said Act is not justifiable and sustainable in the eye of law based upon the factual matrix of the present case and judicial precedence as relief upon by the Tribunal ?

ii) Whether on the facts and in the circumstances of the case and in law, the Hon'ble ITAT is correct in holding that the PCIT was not empowered and entitled to revise assessment order u/s. 263 of the

Act read with Explanation 2 thereto by ignoring that the order passed by the AO is erroneous in so far as it is prejudicial to the interest of revenue inasmuch as the Assessing Officer has passed the assessment order without making inquiries/verification in the light of the unsecured loans ?

We have heard Ms. Smita Das De, learned Advocate for the appellant/revenue.

The short issue, which falls for consideration, is whether the Principal Commissioner of Income Tax was justified in assumption of the jurisdiction under Section 263 of the Act. The case of the assessee was selected for limited scrutiny on the ground that they have availed unsecured loans from the persons who have not filed their return of income but the assessing officer had issued notice under Section 142(1) of the Act and called for information from the assessee and having been satisfied with the completed the assessment. The PCIT invoked its power under Section 263 of the Act on the ground that the order of assessment is erroneous and prejudicial to the interest of revenue. The learned Tribunal has elaborately set out the factual position and has ascertained that all the lone creditors have filed income tax returns and acknowledgement was produced and placed before the Tribunal and several of them have been assessed by the department and not treated to be as shell companies. Thus after having noted this factual position, the Tribunal rightly placed reliance on the decision of the Hon'ble Supreme Court in *Malabar Industries Limited Vs. CIT* (2000) 243 ITR 83 (SC) and granted relief in favour of the assessee. Furthermore a chart was produced before the Tribunal where the assessee has submitted all relevant details and substantiated the same with documentary evidence, from which once again the Tribunal found that all the insecure lone creditors have filed their return of income, fresh identity was established from the loan confirmation letters and the screenshot from M.C.A. portal and for their creditworthiness the audited financial statement and declaration of source of funds by way of bank statement, were placed on record. The learned Tribunal notes that the department was not able to produce any material on record to controvert the factual position, which was established by the Tribunal. Thus, we find that the Tribunal rightly granted relief in favour of the assessee and the order does not call for any interference.

Accordingly, the appeal fails and dismissed.

The substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE)

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.