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

ITAT/92/2023
IA NO. GA/1/2023
KARABI DEALERS PRIVATE LIMITED
Vs.
PRINCIPAL COMMISSIONER OF INCOME TAX 2, KOLKATA

BEFORE:
THE HON'BLE T. S. SIVAGNANAM ACTING CHIEF JUSTICE
AND
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 12TH APRIL, 2023.

Appearance:
Mr. Subhas Agarwal, Adv.
Mr. Brijesh Kr. Singh, Adv.
...for appellant
Mr. Tilak Mitra, Adv.
...for respondent

The Court : This appeal by the assessee has been filed under Section 260A of the Income Tax Act, 1961 (the Act) against the order dated November 2, 2022 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata in ITA No. 389/Kol/2019 for the assessment year 2015-16.

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

- i) Whether, the Learned Tribunal was justified in law in not quashing the order passed under Section 263 by the PCIT-2, Kolkata when the initiation of revisionary proceedings under section 263 was done on the basis of proposal from the A.O. ?

- ii) Whether, on the facts and in the circumstances of the case, the Learned Tribunal was justified in upholding the order passed under section 263 of the PCIT-2, Kolkata when the A.O. had passed the assessment order after due verification/enquiry on the issue which were under consideration by the Learned Commissioner in revisionary proceedings?
- iii) Whether, on the facts and in the circumstances of the case, the order passed by the Learned Tribunal is perverse?

We have heard Mr. Subhas Agarwal, learned Counsel for the appellant/assessee duly assisted by Mr. Brijesh Kr. Singh, learned Advocate and Mr. Tilak Mitra, learned standing Counsel for the respondent/revenue.

The short issue which falls for consideration is whether the Principal Commissioner of Income Tax -2, Kolkata (PCIT) was justified in exercising his power under Section 263 of the Act. On perusal of the order passed under Section 263 of the Act, it is seen that the proceedings were initiated based on a proposal received by the assessing officer. The PCIT would observe that on perusal of the said proposal of the assessing officer, prima facie, it appears that the assessing officer has failed to take a logical action on the information available with him. The statute is very clear that unless and until the twin conditions are satisfied that assessment order should be erroneous and it should be prejudicial to the interest of revenue, the power under Section 263 cannot be invoked. Turning back to the facts of the case, we find that the

assessing officer has specifically recorded in the assessment order dated 21.09.2017 under Section 143(3) of the Act that during the course of assessment proceedings, the assessee was asked to explain the books of accounts, bills and vouchers and the authorised representative of the assessee filed the relevant documents in detail with many explanations which were examined by the assessing officer and verified with the books of accounts and the heard copies of the ITR and audited accounts and thereafter, the assessment was completed. From the notice issued under Section 142(1) of the Act dated 16.08.2017, it is seen that as many as 21 particulars/documents were called upon to be produced by the assessee of which the document/observations in item No. 20-21 are relevant for the purpose of this case, they being (i) large increase in investment in unlisted equities during the year and (ii) low income in comparison to very high investment.

It is seen that first issue on which the information was called for by the assessing officer has not been taken as a ground by the PCIT while assuming jurisdiction under Section 263 of the Act. Thus it has to be seen as to whether assessee had furnished the requisite information with regard to the second issue namely low income in comparison to very high investments. The assessee had placed before the assessing officer many submissions in which the detail explanation has been given with regard to the said issue apart from placing reliance on various decisions of the Hon'ble Supreme

Court as well as the High Courts. Apart from that, a separate reply had also been given on 21.09.2017 dealing with all the twenty-one issues. Thus it cannot be said that assessing officer did not conduct any enquiry in the matter with regard to the issue on which the PCIT had exercised jurisdiction under 263 of the Act. It may be true that a proposal had been received by the PCIT from the assessing officer. However, solely based on the proposal, action could not have been initiated under Section 263 of the Act as the statute mandates that PCIT should enquire and be satisfied that the case warrants exercise of its jurisdiction under Section 263 of the Act. Such satisfaction should be manifest in the show-cause notice which is issued under Section 263 of the Act. However, we find in the instant case the word used by the PCIT is “prima facie”. Thus based on prima facie view the PCIT accepted the proposal of the assessing officer and initiated action under Section 263 of the Act. The decisions of the Hon’ble Courts on the point clearly holds that the satisfaction of the PCIT is essential. Though the Tribunal has knowledge of those facts as also the order sheet maintained by the assessing officer which records that on 19.09.2017 the authorised representative of the assessee had appeared and produced the books of accounts, bills vouchers etc and they were test checked and the case was discussed with the authorised representative of the assessee. If that be so, it could not have been stated that there was any lack of enquiry on the part of the assessing officer. That apart, the Tribunal also admits that a paper book containing 124 pages of documents were also placed. Thus it is a case where the assessing officer

had raised specific query and the case was discussed with the authorised representative of the assessee and thereafter decision has been taken. Similar issue was considered by this Court in the case of *PCIT 9, Kolkata Vs. Reeta Lakmani*; ITAT No. 129 of 2022 etc. dated 22.11.2022 and in *PCIT 9 Vs. Satish Kumar Lakmani* ; ITAT No. 112 of 2022 dated November 22, 2022. Though one of the decisions of this Court has been noted by the Tribunal, the reason assigned by the Tribunal for distinguishing the decision cannot be countenanced. Thus in absence of any satisfaction recorded by the PCIT that the order of assessment was both erroneous and prejudicial to the interest of revenue, the Tribunal ought to have granted relief to the assessee and faltered the PCIT for having exercised its jurisdiction.

For the above reason, the appeal filed by the assessee is allowed and the order passed by the Tribunal as well as the PCIT is set aside and the assessment order stands restored and the substantial questions of law are answered in favour of the appellant/assessee.

(T. S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)