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ITAT/112/2023
IA NO. GA/1/2023

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX – 1, KOLKATA
Versus
C.M. RAJGARHIA (P) LIMITED
…………

BEFORE:
The Hon'ble T.S. SIVAGNANAM ACTING CHIEF JUSTICE
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 10th May, 2023.

Appearance :
Mr. Soumen Bhattacharjee, 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 22nd November, 2023 passed by the Income Tax Appellate Tribunal, Kolkata "B" Bench in ITA 144/Kol/2021 for the assessment year 2015-16. The revenue has raised following substantial questions of law for consideration :-

A) Whether the Learned Tribunal has committed substantial error in law by quashing the Order passed PCIT-3, Kolkata by holding that the rectification Order Under Section 154 of the Income Tax Act, 1961 and assessment Order dated 28.12.2017 passed by the Assessing Officer were not erroneous?

B) Whether the Learned Tribunal has committed substantial error in law by holding that the 'Taxable Distributed Income' of Rs.3,29,00,000/-

not to be taxed under the per view of Section 115QA of the Income Tax Act, 1961?

We have heard Mr. Soumen Bhattacharjee, learned standing Counsel for the appellant/revenue.

The assessee had filed the appeal before the Tribunal challenging the order passed by the *Principal Commissioner of Income Tax-3, Kolkata (PCIT)* in exercise of its powers under Section 263 of the Act. The learned Tribunal noted that PCIT has exercised its revisional jurisdiction in respect of an order passed under Section 154 of the Act, even when the subject matter of revision did not at all arise out of the said rectification order passed by the assessing officer under Section 154 of the Act. The Tribunal perused the case records and found that the assessment was completed under Section 143(3) of the Act by order dated 28.12.2017.

The issue was pertaining to levy of tax under Section 115QA, which was examined by the assessing officer in the assessment proceedings. The Tribunal noted that assessment order having been passed on 28.12.2017, PCIT could have exercised its jurisdiction under Section 263 not later than 31.03.2019. However, the PCIT exercised its jurisdiction on 10.06.2020, which is barred by limitation in respect of the assessment order, which was passed on 28.12.2017. That apart, the Tribunal noted that the assessee in the original assessment proceedings demonstrated that the provision of Section 115QA was not applicable to their case as the explanation to Section 115QA (1) as applicable prior to 01.06.2016. Buy-back means, the purchase by the companies of its own shares in accordance with the provisions of the Section 77 of the Companies Act. Thus, Tribunal noted that as per the said provision in force during the relevant assessment year, the buy-back pursuant to order of

Company Law Board will appear under Section 402 of the Companies Act was not included. Therefore, the Tribunal on fact held that the PCIT was not justified in invoking the provisions of Section 263 of the Act. Thus, we find that the Tribunal having examined the jurisdictional issue as well as on facts allowed the appeal filed by the assessee.

Thus, we find that there is no question of law, much less substantial questions of law arising for consideration in this appeal.

Accordingly, the appeal is dismissed.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.