OD – 6

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITAT/128/2023
IA NO.GA/1/2023

PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA

-Versus-

MONDAL CONSTRUCTION CO. LTD.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE AJAY KUMAR GUPTA
Date : 21st June, 2023

Appearance :
Mr.Vipul Kundalia, Adv.
Mr.Prithu Dudheria, Adv.,
for the appellant.

Mr.Promit Majumdar, Adv.
Ms.Sukanya Dutta, Adv.,
for the respondent.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (for brevity, the Act) is directed against an order dated 4th January, 2023 passed by the Income Tax Appellate Tribunal, B- Bench, Kolkata (the Tribunal) in ITA No.1896/Kol/2019 for the assessment year 2014-15.

We have heard Mr. Vipul Kundalia, learned standing counsel assisted by Mr. Prithu Dudheria, learned advocate appearing for the appellant/revenue and Mr. Promit Majumdar, learned advocate appearing for the respondent/assessee.

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 was justified in upholding the decision of the CIT(A) without going into the facts of the case even though the Assessing Officer had categorically brought on record the fact that the assessee was duly provided with the reasons of re-opening of Assessment and the objections raised by the assessee were duly addressed and that the assessee had raised no further objections till the completion of the assessment despite being awarded several opportunities of being heard and upon compliance with the principles of natural justice?*
>
> *(b) WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law by not considering the ratio of the decision of the Hon'ble Apex Court in the case of GKN Driveshafts (India) Ltd. Vs. DCIT (2003) 259 ITR 19 (SC) that is applicable in the case of the assessee, where it is clearly evident that the objection of the assessee was duly considered and disposed of by the Assessing Officer?*

The short issue which falls for consideration is whether the assessing officer is mandated to pass a speaking order on the objections raised by the assessee on the reasons assigned by the assessing officer for reopening the assessment by issuing notice under Section 148 of the Act. It is an admitted fact that the mandate which has been laid down by the Hon'ble Supreme Court in the decision of GKN Driveshafts (India) Ltd. Vs. DCIT, reported at (2003) 259 ITR 19 (SC) was not adhered to by the assessing officer. Therefore, the Commissioner of Income Tax (Appeals) – 6 had rightly allowed the appeal filed by the assessee by the order dated May 21, 2019 which was affirmed by the Tribunal. The CIT(A) also noted the other decisions of the High Court on the said point. Thus, we find no grounds to interfere with the order passed by the Tribunal.

Accordingly, the appeal fails and is dismissed. Consequently, the application [GA/1/2023] stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(AJAY KUMAR GUPTA, J.)

S.Das/