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

ORIGINAL SIDE

ITAT/143/2023
IA NO.GA/1/2023

PRINCIPAL COMMISSIONER OF
INCOME TAX-13, KOLKATA

-Versus-

SUKHBIR SINGH DHUPIA

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE AJAY KUMAR GUPTA
Date : 28th June, 2023

Appearance :
Mr.Soumen Bhattacharjee,Adv.
for the appellant.

The Court : This appeal has been filed under Section 260A of the Income Tax Act, 1961 (the Act) by the revenue challenging an order dated January 17, 2020 passed by the Income Tax Appellate Tribunal, B-Bench, Kolkata in ITA No.992/Kol/2018 relating to assessment year 2013-14.

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

"(i) Whether the Learned Tribunal has committed substantial error in law by not considering that provision of Section 143(2) deals with administrative convenience and there is no inherent lack of jurisdiction?

(ii) Whether the Learned Tribunal has committed substantial error in law that the assessee has raised the issue of jurisdiction for the first time only after completion of assessment before the CIT(A() and the assessee has foregone his

entitlement to question the jurisdiction under Section 124(3)(a) of the Income Tax Act, 1961?"

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

The short question which was the subject-matter of consideration before the learned Tribunal was whether the Principal Commissioner of Income Tax (Appeals)-13, Kolkata [PCIT(A)] was justified in exercising his powers under Section 263 of the Act. The learned Tribunal after going through the facts found that a regular assessment was set aside by the order passed by the Commissioner of Income Tax (Appeals) dated 11th September, 2018 and the basis for these revision proceedings initiated under Section 263 of the Act being no longer in existence, the Tribunal held that the power under Section 263 could not have been invoked. We find that the reasoning given by the Tribunal is proper and valid.

The revenue contended that the assessee has raised the issue of jurisdiction for the first time only after completion of the assessment before the Commissioner of Income Tax (Appeals). The jurisdiction being a question of law can be raised at any stage of the proceeding and the fact remains that the regular assessment was no longer valid on the date when the PCIT(A) exercised jurisdiction under Section 263 of the Act. In order to give effect to the order passed under Section 263 of the Act, there should be regular assessment which should be valid on the said date. However, the said regular assessment having been quashed by CIT(A), the order passed under Section 263 of the Act cannot be implemented. Thus, we find that the learned Tribunal was right in setting aside the order passed by the PCIT(A).

As a result, the appeals fails and is dismissed. The substantial questions of law are decided against the appellant revenue. Consequently, the connected application stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(AJAY KUMAR GUPTA, J.)

S.Das/