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

ITAT/147/2023
IA NO: GA/1/2023
ARUN KUMAR BOSE
VS
INCOME TAX OFFICER, WARD-1(1), SILIGURI

BEFORE:-
THE HON'BLE THE CHIEF JUSTICE T. S. SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : 2nd AUGUST, 2023.

*Appearance* :
*Ms. Sutapa Roychoudhury, Adv.*
*Ms. Aratrika Roy, Adv.*
*…for appellant*
*Mr. Om Narayan Rai, Adv.*
*…for respondent*

The Court :- This appeal by the assessee filed under Section 260A of the Income Tax Act, 1961(the Act) is directed against the order dated February 09, 2023 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (the Tribunal) in ITA No. 465/Kol/2022 for the assessment year 2014-15. The assessee has framed following substantial questions of law for consideration :-

i) Whether on the facts and circumstances of the case the Learned Tribunal was justified in upholding the order of the CIT(A) when the same is beyond the scope and power vested upon the CIT(A) under the provisions of Section 251(1)(a) of the said Act ?

ii) Whether in the facts and circumstances of the case when the additions made in respect of the sundry creditors namely M/s. Goodwill Corporation (India), M/s. Quality Udyog and M/s. Swastik Trading & Manufacturing Co. were directed to be deleted as being unsustainable can be subject to the enquiries conducted by the Assessing Officer ?

We have heard learned Counsel on either side.

The short question involved in this appeal is whether the Commissioner of Income Tax (Appeals), Siliguri CIT(A), after having fully agreed with the assessee and reached a conclusion that the assessing officer committed an error in making certain additions, could have remanded the matter back to the assessing officer for certain verifications. Section 251 of the Act deals with the powers of the Commissioner of Appeals. Sub Section (1) states that in disposing of an appeal the Commissioner (Appeals) shall have the powers as enumerated in clauses (a), (aa), (b), (c). In so far as the case on hand, clause (a) of Section 251(1) of the Act should be relevant, which states in an appeal against the order of assessment the Commissioner (Appeals) may confirm, reduce, enhance or annul the assessment. On a reading of the Finance Act, 2001 (Circular No. 14 of 2001) the Commissioner of Appeals had no power to remand the matter back to the assessing officer for fresh assessment in accordance with the direction given by the Commissioner (Appeals) after making such further enquiry as may be necessary. Though such power was conferred on the Commissioner (Appeals), the said provision stood omitted by the Finance Act, 2001. In the explanatory notes on the provisions relating to direct taxes, the powers of the Commissioner (Appeals) has been dealt with in paragraph 78.1 which reads as follows :-

> "*78.1. Under the existing provision contained in sub-section (1) of section 251 of the Income-tax Act, in an appeal filed before a Commissioner (Appeals) against an order of assessment, the Commissioner (Appeals) may confirm, reduce, enhance or annul the assessment, or he may set aside the assessment and refer the case back to the Assessing Officer for making a fresh assessment in accordance with the directions given by him, after making such further enquiry as may be necessary. With a view to help bringing about an early finalisation to the assessment and to avoid prolonging the process of litigation, the Act has amended section 251 so as to provide that, in an appeal filed before the Commissioner (Appeals), against an order of assessment, the Commissioner (Appeals) may not set aside the assessment and refer the case back to the Assessing Officer for making fresh assessment. The Commissioner (Appeals) continues to have the powers under section 250 of making further inquiry, or directing the Assessing Officer to make further inquiry and report the result of the same to him, which can be*

*made use of in appeals needing further enquiry or gathering of additional facts or evidence.*

*78.2 This amendment will take effect from 1st June, 2001."*

In the light of the above statutory embargo, the Commissioner could not have remanded the matter back to the assessing office after having decided the case in favour of the assessee in its entirety.

The learned standing Counsel for the respondent/revenue points out that in the findings recorded by the CIT(A), the expression "prima facie" has been used which shows that the CIT(A) had wanted a fresh exercise to be done by the assessing officer and, therefore, it would have been well open to the CIT(A) to call for a remand report and thereafter to enquiry into the matter and proceed to take decision. Therefore, it is the submission that the case should be remanded back to CIT(A) to undertake such an exercise.

We have heard the learned Advocate for the appellant on the above submission. Though in the order passed by the CIT(A), the word "prima facie" has been used, from a cumulative reading of an order passed by the CIT(A) we find that the case has been discussed on merits and thereafter a finding has been recorded that the assessing officer was not justified in making the addition and there was a positive direction to delete the addition. If such is the finding, mere use of the word "prima facie" could not make prima facie view as the CIT(A) has discussed the matter elaborately taking into the consideration the factual position. Before the learned Tribunal, the assessee had specifically raised the ground that the CIT(A) exceeded the limits of powers statutorily bestowed as per Section 251(1)(a) of the Act and grossly erred in law in restoring the case to the assessing officer for action in terms of the order dated 23.11.2011 passed by the CIT(A). Though, such a specific ground raised by the appellant before the Tribunal and noted by the Tribunal in paragraph 3 of the impugned order, this aspect has not been dealt with by the learned Tribunal. Thus, in our view not only the CIT(A) committed an error of law by remanding the matter to the assessing officer for a fresh consideration after having held in favour of the assessee, the Tribunal also did not deal with the said issue. In the light of the statutory embargo, the order of remand passed by the CIT(A) is not tenable in law and consequently, the same required to be set aside as well as the order passed by the learned Tribunal.

One more reason as to why the order of the learned Tribunal has to be interfered with is that the impugned order has been passed in an appeal filed by the assessee and in such an appeal the assessee cannot be in a words off position as the learned Tribunal has gone into the correctness of the finding of the CIT(A) who held in favour of the assessee and thereafter has recorded his opinion. Admittedly, the revenue had not challenged the findings rendered by the CIT(A) which was in favour of the assessee.

Therefore, this is also one more error of law which has been committed by the learned Tribunal justifying the interference with the said order.

For the above reasons, the appeal is allowed and the substantial questions of law are answered in favour of assessee.

Consequently, the application stands disposed of.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA,J.)

SN/GH.