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

ITAT/148/2023
IA NO: GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX 1 KOLKATA
VS
M/S K M KHADIM AND CO

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 17TH July, 2023

Appearance :
Ms. Smita Das De, Adv.
Mr. Amit Sharma, 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 21.12.2022 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in ITA/278/Kol/2022 for the assessment year 2014-15.

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

1. Whether on the facts of the case and in law, the Learned Tribunal was justified in quashing the order under Section 263 of the said Act ignoring the fact that the Assessing Officer in his order under Section 143[3] read with Section 263 dated 23.12.2019 concluded that Rs.3,63,122/- should be added as

interest free advance but in the computation part added Rs.3,36,122/- thus making the order erroneous ?

2. Whether in the facts and circumstances of the case the Learned Tribunal was justified in law to allow the appeal of the assessee on the ground of limitation by reckoning the date of assessment dated 26.12.2016 instead of 23.12.2019 despite the fact that the issue involved in the subsequent proceeding was similar to the earlier one ?
3. Whether in the facts and circumstances of the case the Learned Tribunal was justified in law in not considering the legal aspect of the issue that since the subject matter of the reassessment and assessment were same, doctrine of merger comes into play?

We have heard Ms. Smita Das De, learned standing Counsel for the appellant.

It appears that there is a delay of 27 days in filing the appeal. We have perused the affidavit filed in support of the petition and we find sufficient cause has been shown for not preferring the appeal within the period of limitation. Accordingly, the application is allowed. The delay in filing the appeal is condoned.

The short issue which falls for consideration is whether the assumption of jurisdiction by the Principal Commissioner of Income Tax, Kolkata –1 under Section 263 of the Act was just and proper, more so when the exercise of jurisdiction under the said provision was done for the second time. The learned Tribunal noted that (a) initially the PCIT had exercised its power under Section 263 of the Act, on two grounds, namely alleged non verification and the genuineness of the broker expenditure incurred on new loans and renewal of loans taken for the purpose of business and (b) interest free advances given by the assessee. Pursuant to the order passed under Section 263, the Assessing Officer took up the matter for consideration and completed the assessment under Section 143(3) of the Act by order dated 23.12.2019 determining the total income at Rs.17,70,850/- and raising the total demand of Rs.5,47,192/-. Thereafter, once again the PCIT exercised power under Section 263 of the Act and issued show-cause notice dated 21.02.2022. In the notice after setting out the reasons assigned by the Assessing Officer while completing the assessment vide order dated 23.12.2019 the PCIT would state that on further scrutiny of the assessment records it came to the notice that while computing the assessed income in the order under Section 143(3) read with Section 263 of the Act dated 23.12.2019 the Assessing Officer had erroneously added Rs.3,36,122/- for brokerage and commission works instead of the correct amount of Rs.3,63,122/-, which has resulted in under exemption of income of Rs.27,000/-. This was the reason for once again exercising power under Section 263 of the Act. The assessee submitted the reply to the show-cause notice and raised the question of limitation stating that in terms of sub Section (2) of Section 263 the power could not have been exercised beyond the period of limitation prescribed therein. Further, the assessee contended that pursuant to the order passed by the PCIT on the earlier occasion giving specific direction to the Assessing Officer, he would have very limited power to examine the issues in the proceedings which have been remanded back to the Assessing Officer for consideration and does not empower the Assessing Officer to make other additions. Several decisions were also relied upon by the assessee. Though the Tribunal accepted the plea raised by the assessee as regards the aspect relating to the limitation, it examined the merits of the matter and has recorded a factual finding that the issue on which the PCIT proposed the revision of the order framed under Section 143(3) read with Section 263 of the Act dated 23.12.2019, issue which was directed by the PCIT in order under Section 263 of the Act dated 23.03.2022 was not the subject matter of revisionary proceedings in the first round. Therefore, the learned Tribunal came to the conclusion that the period of limitation has to run from the date of assessment as framed under Section 143(3) dated 26.12.2016, that is at the end of the financial year, 31.03.2017. Therefore, it held that the exercise of jurisdiction under Section 263 of the Act is hopelessly barred by limitation. The learned Tribunal also took note of the decision of Hon'ble Supreme Court in *CIT Vs.ARBUDA MILLS ; (1998) 231 ITR 50 (SC)*, wherein it was held that jurisdiction under Section 263(1) of the Act is sought to be exercised with reference to an issue which is covered by the original order of assessment under Section 143(3) of the Act, which does not form the subject matter of the reassessment. The limitation was necessarily begun to run from the date of order passed under Section 143(3) of the Act.

Reference was also made to the decision of the Hon'ble Supreme Court in the case of *CIT VS.ALAGENDRAN FINANCE LIMITED ;(2007) 293 ITR 1 (SC).*

Thus, we find that the order passed by the learned Tribunal had been passed taking note of the correct legal position and referring to the relevant decision and the said order does not call for any interference.

Accordingly, the appeal as well as the connected application is dismissed.

The substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.