OD-13

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

ITAT 172 OF 2023
IA NO: GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX, ASANSOL
-Versus-
JAGABANDHU DAS

BEFORE:
The Hon'ble T.S. SIVAGNANAM, CHIEF JUSTICE
-And-
The Hon'ble JUSTICE SUPRATIM BHATTACHARYA
Date : 22nd November, 2023

Appearance :
Mr. Amit Sharma, Adv.
..for the appellant

Mr. Hemant Tiwari, Adv.
...for the respondent

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 29th September, 2022 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (Tribunal) in ITA No. 322/Kol/2022 for the assessment year 2015-16.

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

i) Whether in the Learned Income Tax Appellate Tribunal has committed substantial error in law in quashing the order under Section 263 of the Income Tax Act, 1961 when it is apparent from the records that the assessment order is erroneous and prejudicial to the interest of the Revenue inasmuch as the same had been passed by the assessing officer without making due and proper enquiry and without verification of the aspect of cash payment exceeding Rs.20,000/- for purchasing lands in violation of Section 40A(3) of the Income Tax Act, 1961 ?

ii) Whether in the Learned Tribunal has substantially erred in law in quashing the order passed under section 263 of the Income Tax Act, 1961 without appreciating the fact that the appeal of the assessee respondent preferred before the CIT (Appeals) is against the addition of net amount of Rs.7,40,754/- under the head income from business earned from sale of three properties and whereas the said order under Section 263 of the said Act has been passed for not making enquiry on the aspect of violation of provisions of Section 40A(3) of the said Act as the assessee made cash payment of more than Rs.20,000/- in day to a party ?

We have heard Mr. Amit Sharma, learned standing counsel appearing for the appellant and Mr. Hemant Tiwari, learned counsel appearing for the respondent.

After elaborately hearing the learned Advocates for the parties and carefully perusing the order impugned as well as the order passed by the Commissioner of Income Tax (Appeals) and the assessment order, we find that the learned Tribunal has rightly taken note of the factual position and held that the exercise of jurisdiction under section 263 of the Act was bad in law. We find that the respondent assessee is an individual and the factual aspects were examined by the Tribunal and if the case was not under section 263 of the Act, the appeal itself would not be maintainable as it would be hit by the monetary limit as the tax which was demanded was only Rs.1,40,000/-.

In any event, we are convinced that the facts of the case have been examined and the Tribunal returned a finding in favour of the assessee. Thus, we find there is no substantial question of law arising for consideration. Therefore, the appeal is dismissed.

The stay application being IA NO: GA/2/2023 is also dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA, J.)

S.Das/SN.
AR(CR)