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

ITAT/135/2022
IA No. GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX -1, KOLKATA
Vs
M/S. WEEDO VENTURES PVT. LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 3rd January, 2023.

<u>Appearance</u> :
Mr. Smarajit Roy Chowdhury, Adv.
Mr. Soumen Bhattacharyya, Adv.
..for appellant
Mr. J. P. Khaitan, Sr. Adv.
Mr. P. Jhunjhunwalla, Adv.
...for 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 16.4.2021 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata [Tribunal] in ITA No.2535/Kol/2019 for the assessment year 2011-12 the revenue has raised the following substantial question of law for consideration :

1. Whether the Learned Tribunal has committed substantial error in law by quashing the assessment order passed under Section 143(3) of the Income Tax Act by the Income Tax Officer, Ward-9(2), Kolkata on the ground of lack of jurisdiction without considering Sub-section (2) of Section 124 of the Act, 1961 and Sub-Section (3) of 127 of the Income Tax Act, 1961 ?
2. Whether the Learned Tribunal has committed substantial error in law in quashing the assessment order passed under Section 143(3) of the Act even though the assessee did not challenge the point of

jurisdiction before the Assessing Officer as well as CIT(A) and as such stopped from raising the point for the first time before ITAT ?

We have heard Mr. Smarajit Roy Chowdhury, learned Advocate for the appellant and Mr. J. P. Khaitan, learned senior Counsel for the respondent.

The short issue fell for consideration before the learned tribunal was whether the assessing officer did not have jurisdiction to issue notice under section 143[2] on the relevant date. This legal issue was not raised by the assessee at the earliest point of time namely, before the assessing officer nor before the Commissioner of Income Tax [Appeals] and it was raised for the first time before the learned tribunal by filing additional grounds. The revenue opposed such a prayer yet the learned tribunal having been convinced that the issue of jurisdiction goes to the root of the matter permitted the assessee to canvas such issue. After hearing the parties learned tribunal found that the assessing officer did not had jurisdiction and consequently the assessment was void ab initio in coming to such a conclusion. The learned tribunal had referred the decision of this court in the case of West Bengal State Electricity Board vs. Deputy Commissioner of Income Tax, Special Branch I, 2005 278 ITR 218[Cal] and also the decision in the case of Principal Commissioner vs. Oberoi Hotels Pvt. Ltd. 409 ITR 123 [Cal].

Following the decision of the Hon'ble Supreme Court in ACIT vs. Hotel Blue Moon 321 ITR 328[SC] thus we find that the legal position had been rightly taken note of by the learned tribunal and the assessee cannot be prevented from raising the question of jurisdiction which is an issue which goes to the root of the matte and the learned tribunal had rightly permitted the assessee to canvas the issue and also rightly concluded that the assessment was bad in law. Thus, we find there is no substantial question of law arising for consideration in this appeal.

With the above we note that the revenue could not factually controvert the submissions of the assessee that notice under section 143[2] and section 142[1] of the Act was issued by an officer, who did not have jurisdiction over the assessee.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.