O 57

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

ITAT/173/2022
IA NO: GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
VS.
SHRINGAR MARKETING PRIVATE LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 1ST FEBRUARY, 2023

<u>Appearance</u> :
Mr. Prithu Dudheria, Adv.
...for appellant.
Mr. Avra Mazumder, Adv.
Mr. Ramesh Patodia, Adv.
Mr. Samrat Das, Adv.
...for respondent

The Court : - Heard learned Counsel for either side.

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated April 30, 2021 passed by the Income Tax Department Appellate Tribunal "C" Bench Kolkata (Tribunal) in ITA No.637/Kol/2020 for the assessment year 2015-16. The revenue has raised the following substantial questions of law for consideration :-

(a) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in quashing the order under Section 263 of the Income Tax Act, 1961 on the ground that Assessing Officer has already conducted enquiry on issues for which order under Section 263 was passed without considering fact that no such enquiry was conducted by the Assessing Officer ?

(b) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal erred in law in curbing the power of Principal CIT which was granted by the legislature to examine and correct the order of the Assessing Officer especially when this is the only remedy available with the department to correct the error of the Assessing Officer ?

(c) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal erred in law in quashing the order passed under Section 263 of the Income Tax Act, 1961 restricting the power of Principal CIT in those cases where relevant enquiry was not undertaken ?

The short issue which falls for consideration in the instant case is whether the Principal Commissioner of Income Tax Kolkata (PCIT) was justified in invoking his jurisdiction under Section 263 of the Act. On perusal of the order passed by the Tribunal we find that the Tribunal rightly took note of the manner in which the assessing officer had completed the assessment. It was noted that the assessing officer during the course of original assessment issued notice under Section 142(1) of the Act and called for details and information. In point No. 9 of the said notice he had called for details of purchase, sales, stocks in a particular format. The assessee filed the detailed reply on 9.11.2017 along with demat statement for the period from 1.4.2014 to 31.3.2015. That apart copy of the contract notes, copies of bank passbook, copies of ledger, accounts of brokers were also filed. Furthermore, the assessing officer took note of the fact that all transactions were on the stock exchange platform. After due verification the assessing officer did not find anything adverse in the claims made by the assessee. Accordingly, the Tribunal concluded that it is not a case of non verification or non application of mind and that PCIT failed to make out a case that order of the assessing officer is erroneous as well as prejudicial to the interest of the revenue. It is settled principle that to exercise the jurisdiction under Section 263 of the Act the order of the assessing officer has to be erroneous in so far as it is prejudicial to the interest of the revenue. The two conditions to be satisfied or that the order of the assessing officer sought to be revised should be erroneous and the error committed by the assessing officer in the order should be prejudicial to the interest of revenue and both these conditions should stand simultaneously satisfied. The learned Tribunal on examining the facts of the case found that both the conditions were never satisfied nor were satisfied simultaneously. Therefore, the Tribunal granted relief to the assessee. In the light of the factual conclusion arrived at by the Tribunal we are of the clear view that no substantial questions of law arise out for consideration in this appeal.

Accordingly, the appeal stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.