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ITA/266/2009

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

DURGESH CHANDRA SARKAR

-Versus-

COMMISSIONER OF INCOME TAX,
JALPAIGURI & ANR.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 13th February, 2023

Appearance :
Mr. Ramendra Nath Biswas, Adv.
Mr. Avra mazumdar, Adv.
Mr. Suman Bhowmick, Adv.
Mr. Samrat Das, Adv.
...for the appellant.

Mr. Amit Sharma, Adv.
...for the respondent.

The Court : This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 15th May, 2009 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA No.1655/Kol/2007 for the assessment year 2001-02.

The appeal was admitted on 3rd March, 2010 on the following substantial questions of law:

(i) *Whether on the facts and in the circumstances of the case, the Income-tax, Appellate Tribunal was right in law in confirming the addition made towards working capital @ 10% on the purchase mode for making the under disclosed sale of Rs.17,18,100/- ?*

(ii) *Whether on the facts and in the circumstances of the case and on correct and true interpretation of the relevant provisions of the I.T Act the assessing officer was right in law in making the assessment order dated 28th December, 2006 by invoking the provisions of Section 147 read with Section 148 of the I.T. Act on the basis of certain alleged belief, when all the materials for formation of such belief were in his possession long before the expiry of the period if limitation for making a regular scrutiny assessment under Section 143(3) of the I.T. Act ?*

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We have heard Mr. Ramendra Nath Biswas, learned counsel assisted by Mr. Avra Mazumdar, Mr. Suman Bhowmick and Mr. Samrat Das, learned Advocates for the appellant and Mr. Amit Sharma, learned standing counsel for the respondent/department.

Learned Advocate appearing for the appellant submitted that the appellant is not pressing substantial question of law No.1. The said submission is placed on record and substantial question of law No.1 is rejected as not pressed.

With regard to the substantial question of law no.2, the same deals with the correctness of the reopening of the assessment and issuance of notice dated 21st September, 2005 under Section 148 of the Act. Admittedly, the appellant did not seek for reasons for re-opening nor filed any objection to the re-opening but submitted that the original return of income filed on 30th October, 2001 may be treated as return of income pursuant to the notice issued under Section 148 of the Act. Thereafter, the assessing officer proceeded with the assessment by resorting to the scrutiny procedure. From the order passed by the assessing officer, we find that detailed factual aspects have been dealt with and the assessment is completed. The Commissioner of Income Tax (Appeals) tested the correctness of the order and granted partial relief to the assessee by reducing the percentage of undisclosed purchases/sales. The assessee carried the matter on appeal to the learned Tribunal which further reduced the addition to 10% towards purchase on the undisclosed sales.

In our considered view, the entire matter is factual and there is no error in the decision making process adopted by the learned Tribunal or for that matter by the CIT(A).

Thus, the appellant has not made out any ground for interfering with the order passed by the Tribunal. Accordingly, the appeal filed by the assessee (ITA/266/2009) stands dismissed and the substantial question of law no.2 is answered against the appellant.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./S.Kumar