

OD-3

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

ITAT 225 OF 2023
IA NO: GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA
-Versus-
M/S. WEILBURGER COATINGS (INDIA) PVT. LTD.

BEFORE:

The Hon'ble T.S. SIVAGNANAM, CHIEF JUSTICE

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 11th October, 2023

Appearance :

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

Mr. Abhratosh Majumder, Sr. Adv.
Mr. Avra Majumder, Adv.
...for the respondent

The Court : We have heard Mr. Amit Sharma, learned standing Counsel appearing for the appellant and Mr. Abhratosh Majumder, learned senior Advocate for the respondent.

There is a delay of 27 days in filing the appeal. We are satisfied with the reasons assigned in the application for condonation of delay and the delay in filing the appeal is condoned. The application IA No : GA/1/2023 is allowed.

This appeal by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 28th March, 2023 passed by the Income Tax Appellate Tribunal, “C” Bench, Kolkata in ITA No. 753/Kol/2019 for the assessment year 2015-16.

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

- a) Whether in the facts and circumstances of the case and in law the Learned Tribunal has committed substantial error in law in deleting the disallowance of carry forward of losses of earlier years ?
- b) Whether the Learned Tribunal has substantially erred in law in holding that the Assessing Officer exceeded his jurisdiction in enquiring into those issues which were beyond the scope of limited scrutiny, without taking into consideration the fact that the claim of the assessee pertaining to carried forward losses was inadmissible since the beginning itself and therefore the Assessing Officer was justified in disallowing the same without converting the case into complete scrutiny ?

We have heard Mr. Amit Sharma, learned standing Counsel appearing for the appellant and Mr. Abhratosh Majumder, learned senior Advocate for the respondent.

The short issue which falls for consideration in the instant case is whether the Assessing Officer exceeded his jurisdiction in completing the assessment on grounds which were not subject matter of the limited scrutiny.

The contention of the learned standing Counsel for the appellant is that the assessee was put on notice on that particular issue by the Assessing Officer, the assessee participated in the proceedings and thereafter the assessment was completed by order dated 27th December, 2017 under Section 143(3) of the Act. The assessee carried the matter on appeal before the Commissioner of Income Tax (Appeals) 5 [CIT(A)] and the appeal was contested on merits and the appeal stood partly allowed on certain issues by order dated 14th January, 2019. The assessee being aggrieved by the disallowed portion of the order passed by the CIT(A) preferred appeal before the Tribunal and in the appeal additional ground was raised contending that the action of the CIT(A) in confirming the action of the Assessing Officer in making additions in respect of issues not mentioned in limited scrutiny were beyond jurisdiction of the Assessing Officer as the scrutiny assessment was selected for limited scrutiny under Section 143(2) and not complete scrutiny. The Department objected to the additional ground which were raised by the appellant before the Tribunal. However, the learned Tribunal overruled the said objection holding that the issue is jurisdictional issue and can be raised by the assessee at any point of time. This finding of the learned Tribunal is well justified and in accordance with the settled legal principle. Thereafter the learned Tribunal has re-

examined the factual position and found that the issue which was decided by the Assessing Officer was not part of the limited scrutiny for which the assessment was directed to be scrutinised. That apart, the learned Tribunal has also taken note of the CBDT Instruction No.5 of 2016 to hold that the Assessing Officer has exceeded his jurisdiction.

Learned senior Counsel for the respondent/assessee has placed before us another Instruction issued by the CBDT dated 30th November, 2017, being F.No. DGIT(Vig.)/HQ/SI/2017-18, wherein the CBDT has noted instances where some of the Assessing Officer were travelling beyond the issues while making assessment in limited scrutiny cases by initiating inquiries on new issue without complying with mandatory requirements of the relevant CBDT Instruction dated 26.09.2014, 29.12.2015 and 14.07.2016. It has been stated that these instances have been viewed seriously by the CBDT and in one case the Central Inspection Team of the CBDT was tasked with examination of assessment records on receipt of allegations of several irregularities and among other irregularities it was found that no reasons had been recorded for expanding the scope of limited scrutiny, no approval was taken from the PCIT for conversion of the limited scrutiny case to a complete scrutiny case and the order sheet was maintained very perfunctorily. Further, the CBDT has recorded that this gave rise to a very strong suspicion of mala fide intentions and the Officer concerned has been placed under suspension. Therefore, it was reiterated that the Assessing Officer should abide by the Instructions of CBDT

while completing limited scrutiny assessment and should be scrupulous about maintenance of note sheets in assessment folders.

Thus, considering these aspects, we are of the view that the learned Tribunal rightly allowed the assessee's appeal on the said issue. This Court had an occasion to consider a somewhat similar issue in the case of *Principal Commissioner of Income Tax 1, Kolkata Vs. Sukhdham Infrastructures LLP*, in ITAT No. 164 of 2023, dated 14th August, 2023. In the said case an identical contention as raised before us was raised stating that at best the action of the Assessing Officer could be construed to be an irregularity. While considering such a contention in *Sukhdham Infrastructures LLP* the Court rejected the same with the following observation :-

“While considering the said issue, the Hon’ble Supreme Court noted the distinction between the statutes affecting rights and those affecting mere procedure. The revenue cannot rely upon the said decision as the scheme of assessment as provided under Section 143 of the Act is a complete code by itself and the circumstances under which the power under sub-section (2) of Section 143 could be invoked has been clearly spelt out and on a reading of sub-section (3) of Section 143, it is evidently clear that on the day specified in the notice issued under sub-section (2), or as soon afterwards as may be, after hearing such evidence as the assessee may produce and such other evidence as the Assessing Officer may require on specified points, and after taking into account all relevant material which he has gathered, the Assessing Officer shall, by an order in writing, make an assessment of the total income or loss of the assessee, and determine the sum payable by him or refund of any amount due to him on the basis of such assessment.

Therefore, the question of part of the provision being procedural is an incorrect interpretation of the scheme provided under Section 143 of the Act. Further, as noted above, the CIT(A) has examined the merits of the matter and after taking note of the facts granted relief to the assessee to the extent indicated therein.

Thus, for the above reasons, we find that the revenue has not made out any case for interference of the order passed by the Tribunal. Accordingly, the appeal fails and is dismissed.

The substantial questions of law are answered against the revenue.

The application for stay being GA 1 of 2023 is also dismissed.”

In the light of the above, no grounds have been made out to interfere with the order passed by the Tribunal.

Accordingly, the appeal fails and is dismissed.

The substantial questions of law are answered against the revenue.

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

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

