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

ITAT/226/2022
IA No: GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL), KOLKATA-2, KOLKATA
VS.
M/S. EMTA COAL LTD.

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

Appearance :
Mr. Om Narain Rai, Adv.
Mr. Soumen Bhattacharjee, Adv.
....for appellant.

Mr. J.P. Khaitan, Sr. Adv.
Mr. S. Rudra, Adv.
...for the respondent.

The Court : This appeal by the Revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 29th June, 2021 passed by the Income Tax Appellate Tribunal, 'A' Bench, Kolkata (Tribunal) in ITA No.2422/Kol/2018 for the assessment year 2010-11. The revenue has raised the following substantial questions of law for consideration :

a) *Whether the Learned Tribunal has committed substantial error in allowing the appeal of the assessee while treating the mistake occurred in issuance of notice under Section 148 as a jurisdictional mistake rather than procedural mistake and not allowing the same to be curable under Section 292B ?*

b) *Whether the Learned Tribunal has committed substantial error in holding that the defects in the notice under Section 148 were not curable by section 292B of the Income Tax Act, 1961 ?*

c) *Whether the Learned Tribunal has committed substantial error in law by not considering that the Assessing Officer has fulfilled the condition laid down in proviso to section 147 of the Act that assessment is being reopened consequently to failure on the part of the assessee to truly and fully disclosed material facts necessary for assessment ?*

We have heard Mr. Om Narain Rai, learned standing counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel for the respondent/assessee.

The issue which falls for consideration in the instant case is whether the reopening of the assessment pursuant to a notice issued under Section 148 of the Act was valid. We find that the learned Tribunal has examined the factual details thoroughly and it found that the notice for reopening of the assessment was not served on the company, but was issued in the name of a non-existing partnership firm. It is not disputed by the revenue that the partnership firm discontinued its business and the company took over the business of the firm on 18th March, 2010 and consequently, the firm got dissolved. Thus, the Tribunal found that the notice under Section 148 was issued in the name of a non-existing company and consequently this being a jurisdictional error is not curable under Section 292B of the Act.

That apart, in paragraph 13 of the impugned order the learned Tribunal reiterated that it is an undisputed fact that the notice dated 30th March, 2017 issued under Section 148 of the Act had been issued in the name of an erstwhile firm which was not in existence as on the said date. Furthermore, the Tribunal noted that the Assessing Officer was aware of this fact inasmuch as in the earlier notice dated 21st March, 2014 issued under Section 148 of the Act for the same assessment year the Assessing Officer has recognised the company namely, M/s. Emta Coal Ltd. as successor of the firm. Furthermore, the Tribunal also took note of the decision of the Hon'ble Supreme Court in *CIT vs. Maruti Suzuki India Limited, (2019) 416 ITR 613 (SC).* After noting the factual position and taking note of the law on the subject, the appeal filed by the assessee has been allowed.

We find that there is no error in the manner in which the Tribunal has taken the decision nor in the decision making process.

Mr. Om Narain Rai, learned standing counsel appearing for the appellant placed reliance on a decision of the Hon'ble Supreme Court in the case of *Principal Commissioner of Income Tax (Central) -2 vs. Mahagun Realtors (P) Ltd., 2022 Online SC 407* and has drawn our attention to paragraph 43 of the said decision.

In our considered view, the said decision is squarely distinguishable on facts as in the said case the specific finding recorded by the Supreme Court is that amalgamation (in that case) was known to the assessee even at the stage when the search and seizure operation took place as well as the statement recorded by the revenue of the directors and managing directors of the said Group. Thus, in our considered view, the decision in Mahagun Realtors (P) Ltd., does not render any support to the case of the revenue.

Further, the learned Tribunal has rightly noted that the assessment having been reopened beyond a period of four years, it is incumbent upon the assessing officer to satisfy the conditions precedent in the proviso to Section 147 of the Act wherein it has to be brought on record as to the failure on the part of the assessee to truly and fully disclose material facts for the assessment. On perusal of the reasons which were recorded, the Tribunal found that there was no allegation made against the assessee; that there was failure on the part of the assessee in truly and fully disclosing material facts necessary for the assessment. The learned Tribunal in this regard referred to its decision in the case of *Haldia Petrochemicals Ltd. vs. ACIT, in* ITA/2455/Kol/2019 dated 24.03.2021. To be pointed out that the said decision of the Tribunal was challenged by the revenue before this Court in ITAT/252/2022 and by judgment dated 13th January, 2023 the appeal filed by the revenue was dismissed. This finding of the learned Tribunal brings out the correct position of law qua the facts and calls for no interference.

For the above reasons, we are not inclined to interfere with the order passed by the learned Tribunal. Accordingly, the appeal (ITAT/226/2022) is dismissed and the substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/SN/As/S.Das