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

ITAT/247/2022
IA NO: GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX 9 KOLKATA
VS.
HUMARA INDIA CREDIT COOPERATIVE SOCIETY LTD.

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

Appearance :
Mr. Om Narayan Rai, Adv.
Mr. Soumen Bhattacharyya, Adv.
…for appellant
Mr. Prityush Jhunjhunwalla, Adv.
Mr. U. Sharma, Adv.
…for respondent

The Court : - This appeal by the revenue has been filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 15th December, 2021 and corrected by order dated 9th February, 2022 in ITA No.192/Kol/2021 for the assessment year 2016-2017.

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

(a) Whether the Learned Tribunal has committed substantial error in law by holding that the Principal Commissioner of Income Tax – 9, Kolkata in his order passed under Section 263 of the Income Tax Act, 1961 had set aside only a single issue of verification of allowability of carrying forward of loss by the Assessing Officer?

(b) Whether the Learned Tribunal has committed substantial error in law in not recognizing that the assessee's claim of substantial deduction in Schedule BP of Income Tax Return and non-verification of the same by Assessing Officer was an issue in the of order passed under Section 263 of the Income Tax Act, 1961 and the assessment order was set aside on such ground ordering fresh assessment ? ,

(c) Whether the Learned Tribunal has committed substantial error in law in not recognizing that substantial amount of investment in the Balance Sheet, income/advance/investment in share by assessee and not-verification of the same by Assessing Officer was an issue in the order passed under Section 263 of the Income Tax Act, 1961 and was set aside and the matter was sent back to the Assessing Officer for fresh assessment on such ground ?

Heard learned Counsel for either side.

The short question which falls for consideration is whether the assumption of jurisdiction by the Principal Commissioner of Income Tax 9 [PCIT] under section 263 of the Act was justified. On going through the order passed by the learned tribunal we find that the learned tribunal has extensively considered the factual situation and found that the assessee was not given any opportunity by the PCIT to explain or controvert a new issue which was taken up for consideration by the PCIT which was not an issue which was put to the assessee at the first instance. On going through the order impugned we find that the entire matter is factual and no question of law much less substantial question of law arises for consideration.

For the above reasons, the appeal fails and dismissed.

Consequently, the application, GA/2/2022 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.