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

ITAT/251/2022
IA No:GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL 2, KOLKATA
VS.
M/S. DECENT ENCLAVE (P) LTD
(FORMERLY KNOWN AS DRISHTI ACCESSORIES (P) LTD.)

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 8th February, 2023

Appearance :
Ms. Smita Das De, Adv.
....for appellant

Mr. Subash Agarwal, Adv.
...for the respondent

The Court : We have heard Ms. Smita Das De, learned standing counsel appearing for the appellant and Mr. Subash Agarwal, learned counsel appearing for the respondent.

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order 18th June, 2021 passed by the Income Tax Appellate Tribunal, 'A' Bench, Kolkata (Tribunal) in ITA No.39/Kol/2020 for the assessment year 2009-10.

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

(A) Whether on the facts and circumstances of the case and in law, the Income Tax Appellate Tribunal erred in holding that the usurpation of jurisdiction exercising revisional jurisdiction by the Principal CIT is not sustainable in the eyes of law whereas the CIT specifically pointed out the patent flaws in the enquiry/investigation ?

(B) Whether on the facts and circumstances of the case and in law, the Income Tax Appellate Tribunal erred in quashing the order passed u/s 263 of the Income Tax Act, 1961 without examining the real issue involved in the matter wherein it is found that the assessee did not satisfy as to the source of income of share applicants and the cause of purchasing shares with high premium of an unknown company ?

On going through the order passed by the learned Tribunal, we find that the case on hand is one where the Principal Commissioner of Income Tax (PCIT) invoked his jurisdiction under Section 263 of the Act on three occasions. It appears that there were three Assessing Officers who had completed the assessments and each time when the Assessing Officer completes such assessment, a different PCIT has invoked his power under Section 263 of the Act. The learned Tribunal after taking note of the factual position examined as to whether the PCIT was justified in invoking his power under Section 263 of the Act for the third time. It was pointed out that the only ground on which such power was invoked is by stating that the documents in Form Nos.2 and 5 filed as per the Companies Act were not examined by the Assessing Officer. The Tribunal notes that these forms are only compliance forms filed before the Registrar of Companies when the assessee company issues shares and in the event there is any increase in the authorized capital and the same cannot be termed as a crucial document in the factual scenario of the case. Furthermore, on facts, the learned Tribunal found that no new information is available in those two forms and even assuming there were omission to consider those two forms, it is not a case where the twin conditions require to be satisfied for invoking the powers under Section 263 of the Act would stand fulfilled.

The learned Tribunal has made an elaborate factual exercise and granted relief to the assessee. It has also rightly taken note of the various decisions of the Hon'ble Supreme Court as well as the other High Courts as to when and under what circumstances the power under Section 263 of the Act can be invoked.

Thus, we find that the matter is entirely factual and no question of law, much less substantial question of law, arises for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

Consequently, the application for stay being IA No.GA/2/2022 is also dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/SN.