OD–4

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

ITAT/272/2022
IA NO: GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS.
SMT. RACHANA TODI

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 31st January, 2023

<u>Appearance</u> :
Mr. Soumen Bhattacharjee, Adv.
…for appellant.
Mr. Dibanath Dey, Adv.
Ms. Pallavi Pain, Adv.
…for respondent

<u>GA/1/2022</u>

The Court : - Heard learned Counsel for either side.

There is a delay of 82 days in filing the appeal.

Upon perusal of the affidavit filed in support of the condone delay application we are satisfied that sufficient cause has been shown by the appellant/revenue for not preferring the appeal within the period of limitation. For such reason the application is allowed and the delay in filing the appeal is condoned.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961(the Act for brevity) is directed against the order dated 31.3.2022 passed by the Income Tax Appellate Tribunal "B" Bench Kolkata in ITA No. 137/Kol/2021 for the assessment year 2016-17.

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

A. Whether the Learned Tribunal has committed substantial error in law in overlooking the incidence of non-establishment of transferred landed property as 'Agricultural Land' as per provision Sec.2(14)(iii) of the Act?

B. Whether the Learned Tribunal has committed substantial error in law in ignoring the required implementation of the provision of Section 54B relating to transfer/sale of claimed Agricultural Land by the assessee?

C. Whether the Learned Tribunal has committed substantial error in law in not appreciating that the PCIT has correcting by invoke the power under Section 263 of the Income Tax Act as the assessment order was erroneous in so far as it was prejudicial to the interest of revenue?

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The short question which falls for consideration in this appeal is whether the Tribunal was justified in interfering with the order passed by the *Principal Commissioner of Income Tax – 1, Kolkata (PCIT)* in exercising its power under Section 263 of the Act. The learned Tribunal has embarked upon fact finding exercise to ascertain as to whether the twin test which are required to be fulfilled for invoking the power under Section 263 of the Act stands attracted. After examining the facts the learned Tribunal has found that the very basis on which the PCIT had invoked its power under Section 263 of the Act was absent. Furthermore, the learned Tribunal also pointed out assuming that the order of the PCIT is upheld the assessing officer will not be in a position to implement the order when it is an undisputed fact that the assessee has not made any claim under Section 54B of the Act. Furthermore, the learned Tribunal took note of the term "record" occurring in explanation (1)(b) of the Section 263 of the Act and held that the "record" shall include all documentary evidences which were submitted before the assessing officer and also those submitted before the PCIT in response to the show-cause notice issued under Section 263 of the Act. Further it was pointed out that PCIT is required to examine all documentary evidences including those which were before the assessing officer and submitted before him. On fact the Tribunal found that the assessee in the return of income as w3ell as the computation of income did not make any claim for exemption under Section 54B of the Act. Furthermore, the learned Tribunal found that PCIT did not record any satisfaction based on correct and verifiable set of facts relating to the claim of deduction found under Section 54B and reflect of agricultural income in the return to fulfil the mandatory requirement of Section 54B for the land put to agricultural use. Therefore, the learned Tribunal came to the conclusion that exercise of the jurisdiction under Section 263 of the Act is totally erroneous. That apart the learned Tribunal also took note of the various decisions as to the manner in which the enquiry is required to be conducted by the PCIT before he assumes jurisdiction under Section 263 of the Act. Thus we find that there is no questions of law much less substantial questions of law arising out for consideration in this appeal.

Accordingly, the appeal fails and dismissed.

Consequently, the stay application also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.