

ITA/2/2011

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (Income Tax)
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX,
KOLKATA-X

-Versus-

USHA RANJAN SARKAR

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
Date : 15th January, 2024

Appearance:
Mr. Prithu Dudheria, Adv.
...for the appellant.

The Court : Heard learned counsel for the appellant.
This appeal was admitted by an order dated 25.08.2010, which is reproduced below:

"This appeal is admitted on the following substantial question of law relating to Assessment Year 2004-05 :

"Whether in the facts and circumstances of the case, the decision of the Learned Tribunal in deleting the addition made by the Assessing Officer without assigning any valid reasons was perverse in law in as much as it failed to take into consideration relevant facts and evidence (ignoring the report of the Executive Engineer to establish the said deletions solely on the basis of the order

of the Commissioner of Income Tax (Appeal) which was totally irrelevant and not germane for consideration ?

Let requisite number of paper books be filed within two months from date.

Mr. Khaitan appearing on behalf of the respondent waives service of notice of appeal.

All parties shall act on a xerox signed copy of this order on usual undertakings."

More than 13 years have passed but the appellant/income tax department has not filed paper book.

We find that the income tax appeal No.1452(Kol)/2009 for the Assessment year 2004-05, (ACIT, Circle-30, Kolkata v. Usha Ranjan Sarkar, Kolkata) filed by the appellant herein was dismissed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata by order dated 05.10.2009 affirming the order of the CIT(A). We further find that the CIT(A) had passed the order on the basis of remand report submitted by the assessing officer in which the assessing officer himself had stated that voucher numbers and dates for the five amounts in question have been wrongfully entered by the assessing officer. Based on that, the CIT(A) passed the order deleting the addition of Rs.3,90,25,235/-. By the impugned order, the ITAT has affirmed the order of the CIT(A). Discussion in this regard has been made by the ITAT in paragraph 5 of the impugned order.

We find that the finding recorded by the ITAT in the impugned order is a finding of fact based on consideration of relevant material on record.

Learned counsel for the appellant could not point out any perversity or infirmity in the impugned order of the Tribunal.

Under the circumstances, the question of law as framed above is answered in favour of the assessee and against the revenue.

The appeal (ITA/2/2011) has no merit and is, therefore, dismissed.

(SURYA PRAKASH KESARWANI, J.)

(RAJARSHI BHARADWAJ, J.)