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

ITAT/42/2024
IA NO: GA/1/2024, GA/2/2024
PRINCIPAL COMMISSIONER OF
INCOME TAX CENTRAL 1 KOLKATA
VS
M/S RANI SATI AGRO TECH PVT LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 23rd February, 2024.

Appearance :
Ms. Smita Das De, Adv.
…for appellant
Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Avra Mazumder, Adv.
Ms. Alisha Das, Adv.
Mr. Suman Bhowmik, Adv.
Mr. Kausheyo Roy, Adv.
…for respondent

The Court :- We have heard Mr. Smita Das De, Mr. Prithu Dudhoria, learned Counsel for the appellant and Mr. Abhratosh Majumder, learned standing Counsel for the respondent.

It appears that there is a delay of 16 days in filing the appeal. We are satisfied with the explanation offered and the delay in filing the appeal is condoned. GA/1/2024 is allowed.

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated June 19, 2023 passed by the Income Tax Appellate Tribunal , "A" Bench, Kolkata in ITA/85/2022 for the assessment year 23012-13. 'The revenue has raised the following substantial questions of law for consideration :

a) WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law to quash the order passed u/s 263 of the Income Tax Act, 1961 by holding that in the present case, the PCIT grossly erred in assuming jurisdiction under section 263 of the Income Tax Act 1961 ?

b) WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law to quash order u/s 263 of the Act without considering the fact that before passing order u/s 263 of the Act, the assessee was issued show cause notice and provided with sufficient opportunities to explain, as to why remedial action under section 263 should not be taken in in its case but the assessee failed to make any compliance ?

We have heard learned Advocates for the parties.

The short question which falls for consideration in the instant case is whether in the second round of litigation whether the Commissioner of Income Tax was justified in invoking his power under Section 263 of the Act. The learned Tribunal has set down elaborate reasons in support of his conclusion while deciding the case in favour of the assessee. It has also taken note of the relevant case law on the subject including the decision of the Hon'ble Supreme Court in the case of *PCIT vs.NRA IRON & STEEL PVT. LTD.* 117 taxmann.com 752. We find that the Tribunal has examined the factual position thoroughly and it has noted that in compliance with the direction issued by the Commissioner under Section 263 by order dated 2.12.2015 the assessing officer commenced his scrutiny proceedings. The manner in which such scrutiny was done was taken note of the Tribunal. Further The Tribunal noted the assessing officer also called for the details of the share application money received during the year by the letter dated 6.5.2016 and also to the reply given by the assessee wherein full details were provided about the type of business carried on by the assessee, the audited financial statement, auditor's report note, NBFC auditors report from Reserve Bank, list of directors, details of trade payables, details of sundry debtors, list of purchases during the year. The Tribunal also noted that the assessee had filed the details of allotment of equity shares to the three share subscribers and also the date-wise details which were filed regarding the information received from banking channels. Thus we find that the learned Tribunal was fully justified in concluding in favour of the assessee after noting that the assessing officer had conducted extensive enquiry on issues and directions mentioned in the order dated 2.12.2015 passed under Section 263 of the Act. Thus we find no grounds have been made out to interfere with the order passed by the learned Tribunal. Before parting we would like to observe that the understanding of the legal position by the Principal Commissioner of Income Tax , Kolkata –IV in his order dated 12.3.2019 in particular in paragraph 4.4 is incorrect. It has been observed that any order passed subsequent to the order under Section 263 must be in favour of the revenue. Further, it has been observed that earlier there is income which could be enhanced or could be the same as earlier order but with the enhanced enquiry so that the addition should be strengthened to pass the test of appellate proceedings, this proceedings is erroneous when the Commissioner exercised power under Section 263 of the Act the twin conditions which have been laid down and reiterated in several decisions including the decision of the Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. vs. CIT (2000) 243 ITR 83 (SC), CIT vs. Max India Limited, 295 ITR 0282* has to be complied with.

In absence, of such compliance the question of making an addition similarly the proceedings has been drawn under Section 263 is an incorrect interpretation of the legal position.

For the above reasons, the appeal filed by the revenue is dismissed and the substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.