OD-6

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

ITAT/62/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSONER OF INCOME TAX-2, KOLKATA
VS.
M/S. TCG LIFE SCIENCES PVT. LTD.

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 19th June, 2024

Appearance :
Mr. Tilak Mitra, Adv.
Mr. Soumen Bhattacharjee, Adv.
…for appellant.

Mr.Ananda Sen, Adv.
Mr.Anuran Samanta, Adv.
Mr.Sabyasachi Mandal, Adv.
…for the respondent.

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 10th November, 2022, passed by the Income Tax Appellate Tribunal, 'C' Bench, Kolkata (Tribunal) in ITA No.142/Kol/2021 for the assessment year 2013-14.

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

a) *The Learned Tribunal has committed substantial error in law by not considering that mere production before the Assessing Officer the books of accounts or the other evidences from which material evidences could with due diligence have been discovered by the Assessing Officer wherein in the explanation no.2 as inserted in the Act with effect from 01.06.2015 specifically provides that order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of the Revenue, if in the opinion of Principal Commissioner, the order is passed without making enquiry or verification which should have been made and allowing any relief without enquiry into the claim?*

b) The Learned Tribunal has committed substantial error in law in quashing the order under section 263 of the Income Tax Act, 1961 mere based on the fact that the assessee made submission to the query related on the issue made by the Assessing Officer through notice under Section 142(1) of the Act during the course of assessment proceeding although failed to consider that the Assessing officer did not make any enquiry or verification to the issue and allowing relief without enquiry into the claim?

We have heard Mr. Tilak Mitra, learned senior standing counsel appearing assisted by Mr. Soumen Bhattacharjee for the appellant/revenue and Mr. Ananda Sen, learned counsel appearing for the respondent/assessee.

The short question which falls for consideration in this appeal is whether the Principal Commissioner of Income Tax, Kolkata II (PCIT) was justified in invoking his power under Section 263 of the Act. At the first blush the order passed by the PCIT dated 26th February 2021 appears to be a well-reasoned and speaking order. However, on a closest scrutiny we find that only in paragraph 5 of the order the figures relating to claim of the depreciation have been noted. Thereafter, the PCIT extracted certain paragraphs from several decisions of the High Court and the Hon'ble Supreme Court and has recorded finding in paragraph 11 that in the light of the said decisions, the assessment order dated 28th July, 2017 passed by the assessing officer is erroneous in so far as it is prejudicial to the interest of the revenue.

Thus, it is clear from the order passed by the PCIT that the explanation offered by the assessee to the show cause notice dated 8th February, 2021 has not been dealt with nor held to be factually incorrect. When the matter travelled to the Tribunal, the Tribunal took upon itself the exercise for verifying the actual position. This is evident from the impugned order. The

Tribunal has referred the entire records which have been placed by the assessee in the form of a paper book and has recorded a factual finding that there has not been due application of mind by the PCIT. Thus, we find that there is no question of law much less substantial question of law arising for consideration in this appeal.

In the result, the appeal fails and is thus dismissed. The connected application being IA No.GA/2/2024 stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das/mg.