OD – 30

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITAT/64/2024
IA NO.GA/1/2024, GA/2/2024

PRINCIPAL COMMISSIONER OF INCOEM TAX, ASANSOL
VS
MONIKA MONDAL

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

Appearance :
Mr.Tilak Mitra, Adv.
..for the appellant.

Mr. Hemanta Tiwari, Adv.
..for the respondent.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 is directed against the order dated 13th January, 2023 passed by the Income Tax Appellate Tribunal, Bench – A, Kolkata for the assessment year 2017-18.

The revenue has raised the following substantial question of law :

"*(i) WHETHER the Learned Tribunal has erred in concluding that if an assessment order is in appeal before the CIT(A) then Ld. Commissioner cannot invoke jurisdiction under section 263 of the Income Tax Act by merely holding that CIT(A) and AO have co-terminus powers and any error in the assessment order can be corrected by the CIT(A)?*

(ii) WHETHER the Learned Tribunal has substantially erred in law by ignoring that as per explanation 2 to section 263(1), an 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 the order is passed without making enquiries or verification which should have been made?"

After elaborately hearing the learned advocates for the parties and carefully perusing the materials placed on record, we find that on two grounds the appeal filed by the revenue cannot be entertained, firstly on the date when the proceedings were initiated under Section 263 of the Act and statutory appeal before the Commissioner of Income Tax (Appeals) was pending. This fact was not disputed and rightly noted by the Tribunal in paragraph 14 of the impugned order wherein the learned Tribunal has examined the scope and ambit of Section 263(1)(c) of the Act. The said finding recorded by the Tribunal to hold that the proceedings under Section 263 of the Act could not be invoked is well justified and does not call for any interference. The Commissioner of Income Tax (Appeals) in a regular appeal filed by the assessee has passed an order on 1st June, 2023 by which the amount of Rs.1,02,60,638/- on account of unexplained sundry debtors were deleted and the assessee succeeded in the appeal. We are informed, as against the said order passed by the CIT(A) dated 1.6.2023, no appeal has been filed by the department. Thus, we find no grounds to entertain this appeal.

The appeal is, therefore, dismissed and the connected applications stand dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das
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