OD – 38

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

ORIGINAL SIDE

ITAT/96/2024
IA NO: GA/1/2024, GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX(CENTRAL – 2), KOLKATA
VS
DEEP HOLDING PVT. LTD.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 1st May, 2024

Appearance :
Mr. Om Narayan Rai, Adv.
Mr. Soumen Bhattacharjee, Adv.
...for the appellant.

Mr. Pranit Bag, Adv.
Mr.Pradip Jewrajka, Adv.
Ms. Pooja Jewrajka, Adv.
..for the respondent.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 9th January, 2023 passed by the Income Tax Appellate Tribunal, Bench-A, Kolkata (the Tribunal) in ITA No.315/Kol/2022 for the assessment year 2017-18.

The revenue has raised the following substantial questions of law :

"*(i) Whether the Learned Tribunal has committed substantial error in law by allowing the appeal of the assessee and quashing the revision order under Section 263 of the Income Tax Act, 1961 passed by the Principal Commissioner of Income Tax?*

> *(ii) Whether the Learned Tribunal has committed substantial error of law by not considering that in Malabar Industrial Co. Ltd. – Vs – CIT(243 ITR 89), the Hon'ble Apex Court has held that if the Assessing Officer passes an order without application of mind resulting in loss of tax, if becomes prejudicial to the interest of revenue, justifying exercise of jurisdiction under Section 263(1) of the Income Tax Act by the Commissioner?"*

We have heard Mr. Soumen Bhattacharjee, learned junior standing counsel appearing for the appellant/revenue and Mr. Pranit Bag, learned counsel appearing for the respondent/assessee.

There is a delay of 241 days in filing the appeal. The respondent/assessee has filed their affidavit in opposition and the respondent is vehemently opposing the prayer for condonation of delay.

Considering the fact that the delay is 241 days and this being an appeal filed under Section 260A of the Act where we are required to answer the substantial questions of law arising for consideration, we exercise our discretion and condone the delay.

The condone delay application [GA/1/2024] is allowed.

The short question involved in this appeal is whether the Principal Commissioner of Income Tax (PCIT) could have exercised his jurisdiction under Section 263 of the Act. Essentially the matter pertains to estimation of income and estimation of profit. It is not the case of the PCIT that the assessing officer did not consider any of the aspects. On going through the assessment orders passed under Section 144 of the Act dated 31.12.2019, it is seen that the assessing officer has elaborately discussed the issues with the assessee and issued questionnaire and after collecting the details has completed the assessment. As righty pointed out by the Tribunal that the PCIT has adopted its own formula and faulted the assessing officer for not appropriately estimating the income and appropriately estimating the profit, the difference in the estimation appears to be marginal since the percentage of estimated income as determined by the assessing officer is 0.32% whereas the PCIT would estimate it at 5%. With regard to the estimate of profit, the assessing officer estimated it at 3.12% whereas PCIT would state that it should be 5%. In any event, nothing has been brought on record to show that there was no application of mind by the assessing officer to the facts which are germane. Thus, the conditions required to be fulfilled in invoking Section 263 of the Act having not been fulfilled, it was not a case where the power could have been exercised. The Tribunal also held that the case on hand is not a case where there was any unaccounted expenditure has been found rather it is a case of estimation of income by applying the net profit rate. 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 is dismissed. Consequently, the connected application [GA/2/2024] is also dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das
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