

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

ITAT/106/2024
IA NO: GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL -2, CHENNAI
Vs
M/S. OJASVI MOTOR FINANCE PVT. LTD.

BEFORE:
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 3rd May, 2024.

Appearance:
Mr. Soumen Bhattacharjee, Adv.
...for the appellant

Mr. R. Sivaraman, Adv.
Ms. Kishwar Rahman, 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 an order dated 5th February, 2020 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in I.T.A. No.400/Kol/2018 for the Assessment Year 2008-09.

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

- A. *Whether the learned ITAT has committed substantial error in law in holding that the assessment order under Section 147/143(3)/263/144 dated 24.03.2014 passed by the Assessing Officer was not – existence in the eye of law, thus deleting the addition of Rs.95.39 crores without adjudicating on the facts of the case.*

B. Whether the learned Tribunal has committed substantial error in law by not considering that though the order under Section 127 of the Income Tax Act, was issued on 15.03.2013, the PAN was and records have also not been transferred from ITO, Ward 1(4), Kolkata to Central Circle 2(3), Chennai.

We have heard Mr. Soumen Bhattacharjee, learned counsel for the appellant and Mr. R. Sivaraman, learned counsel appearing for the respondent/assessee.

The short question which falls for consideration in the instant case was whether the Assessing Officer had jurisdiction to pass the assessment order dated 24th March, 2014 after the file was transferred to ACIT, Central Circle 2(3), Chennai pursuant to an order passed by the Commissioner of Income Tax under Section 127 of the Act.

It is submitted by the learned Senior standing counsel for the Revenue that despite notices and summons, the assessee did not appear and cooperate in the assessment proceedings and the Assessing Officer has proceeded to take note of the factual details available and after noting the decision of the Hon'ble Supreme Court in *Sumati Dayal vs. CIT, 214 ITR 801(SC)* completed the assessment under Section 147, 143(3), 263 and 144 of the Act by an order dated 24th March, 2014. It is submitted that at no point of time, the assessee had raised the issue relating to jurisdiction before the Assessing Officer. When the assessee carried the matter on appeal before the Commissioner of Income Tax (Appeals) – 6, Kolkata (CITA), such a ground was not canvassed and for the

first time before the learned Tribunal this issue was raised and the Tribunal has decided the matter in favour of the assessee without adverting to the conduct of the assessee. Therefore, it is submitted that the case of the assessee ought not to have been allowed on this ground.

Per contra, the learned advocate appearing for the respondent assessee submitted that the only summons or notice received by the assessee from the Assessing Officer is dated 21st February, 2014. Further, it is submitted that it is incorrect to contend that the assessee did not raise the jurisdictional point before the appellate authority and the fact remains that the said point was specifically canvassed by the assessee before the CIT(A). In this regard, the learned advocate has drawn the attention of this Court to the grounds raised before the CIT(A). Before the CIT(A), the assessee contended as follows:

“It may be noted that the order u/s 263 was passed on 7.3.2013 but both the first notice and final reminder were issued on a single day i.e. 21.02.2014 whereas the assessment was getting time barred on 31.03.2014 fixing date of hearing on 10.03.2014 for both the first notice as well as final reminder. The notices were addressed and served at the old office of the company at P-41, Princep Street, Kolkata-700072 on 07.03.2014 in spite of the fact that the notice of change of address was filed with NSDL on 31.12.2012 and also intimated to the AO with evidences on 14.01.2013. Besides, the above notices issued by the AO were without jurisdiction since on 15.03.2013, the Ld. CIT had passed an order u/s 127 transferring the jurisdiction of the assessee from ITO Ward 1(4) to ACIT, CC-2(3)/Chennai. As such the notice issued and assessment order passed by the AO are without jurisdiction. Moreover, the AO without waiting for compliance by the assessee on 10.03.2014 also issued summons to all the shareholders on 21.02.2014 itself ignoring the fact that

all the share applicants were amalgamated and there was no existence of the share applicants as on the date of issue to notices to them. As such there was not valid service of notice even to the share applicants also. It shows that the AO was not serious in granting any opportunity of being heard. The AO never sought any explanations from the assessee about non-service of the summon to the share applicants (reason being all share applicants had amalgamated). The AO even did not consider the paper books filed by the assessee evidencing the identity and creditworthiness of the share applicants and genuineness of the transaction. Hence the assessment having been completed in post haste and without jurisdiction and therefore the same is bad in law and is liable to be quashed.”

Thus, it is seen that the jurisdictional point was raised by the assessee before the CIT(A). However, it appears that the CIT(A) did not appreciate the same in a proper perspective nor considered the effect of the said submission. Before the Tribunal, the assessee has confined their argument only to the jurisdiction point which is evident from paragraph 2 of the impugned order. The learned Tribunal on going through the factual position found that the case as canvassed by the assessee was established on facts. It is seen that on 17.06.2010, the assessment under Section 143(3) was completed. Thereafter, two notices were issued under Section 263 of the Act dated 21.12.2012 and 15.12.2013. On 07.05.2013 the CIT had passed the order under Section 263 of the Act. By order dated 15.03.2013, the CIT(A) transferred the file to the jurisdiction of the Assessing Officer in Chennai. It is thereafter the assessing authority had issued notice dated 21.02.2014 and proceeded to complete the assessment on 24.03.2014. Thus, it is evidently clear that on and after the

order passed by the CIT transferring the files to the jurisdiction at Chennai by order dated 15.03.2013, the Assessing Officer here in Kolkata has no jurisdiction to deal with the matter. This aspect has been rightly noted by the learned Tribunal. The learned Tribunal also took note of the decision of the Hon'ble Division Bench of this Court in *Ramshila Enterprises Private Limited* 383 ITR 546. In the said decision, the Court took note of the judgment of the Hon'ble Supreme Court in *Pandurang and Others vs. State of Maharashtra* (1986) 4 SCC 436 for the proposition that even a right order by a wrong forum is a nullity. Reference was also made to the decision of the Division Bench of this Court in *ITO, 'A' Ward, District Howrah and Others vs Ashoke Glass Works* (1980) 125 ITR 491 (Cal) wherein it was held that when the jurisdiction is validly removed by a competent authority under the provisions of a statute, the original court or any Tribunal or authority in such event will be incompetent, as having ceased to have jurisdiction, to proceed further with the pending proceeding or proceeding which may be instituted after such removal of jurisdiction.

After noting the above decisions, the Tribunal has examined the facts and has found that on the date when the Assessing Officer completed the assessment, he had no jurisdiction over the matter.

The learned Advocate appearing for the respondent assessee placed reliance on the decision of the Division Bench of High Court of Judicature at Bombay in Income Tax Appeal No. 889 of 2018 dated 2nd December, 2022. In the said case, the factual position is more or less identical to that of the case

on hand. In the said case, it was contended by the Revenue that the Assessing Officer would continue to exercise jurisdiction in the case of the assessee in as much as the PAN of the assessee came to be transferred only subsequently. This argument was rejected by the Division Bench and held that the transfer of PAN is consequential to the transfer of jurisdiction and it is the PAN which follows the jurisdiction and not vice versa.

Before us, the Revenue has canvassed that the files as well as the PAN was still lying within the jurisdiction of the Income Tax Officer Ward 1(4) Kolkata. The transfer of the files is a ministerial or an administrative act to be done by the department for which the assessee cannot be held responsible. That apart, the transfer of the PAN was only a consequential proceeding to the transfer of jurisdiction and therefore the same cannot be a ground to hold that the Assessing Officer had jurisdiction over the matter despite the order of transfer passed by the Commissioner on 15.03.2013.

Thus, we find no grounds to interfere with the order passed by the learned Tribunal. Accordingly, the appeal fails and the substantial questions of law are answered against the Revenue.

(T.S. SIVAGNANAM, C.J.)

(HIRANMAY BHATTACHARYYA, J.)