OD – 19

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

ORIGINAL SIDE

ITAT/122/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX
ASANSOL
VS
PURULIA CENTRAL COOPERATIVE BANK
LIMITED

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 22nd May, 2024

Appearance :
Mr.Smarajit Roy Chowdhury, Adv.
Mr.Prithu Dudheria, Adv.
..for the appellant.

Ms. Swapna Das, Adv.
Mr.Siddharth Das, 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 11th July, 2023 passed by the Income Tax Appellate Tribunal, C-Bench, Kolkata (the Tribunal) in ITA/3/Kol/2021 for the assessment year 2006-07.

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

"WHETHER on the facts and circumstances of the case and in law, the Hon'ble Income Tax Appellate Tribunal, Kolkata was justified in law in allowing the appeal of the assessee and

quashing the reassessment order only on the ground that the case has been reopened after the expiry of 4 years and the Assessing Officer failed to pinpoint the failure on the part of the assessee to disclose all material facts fully and truly without considering the fact that the case had been reopened based on Hon'ble Supreme Court judgment in the case of Togars' Co-operative Society Ltd. (C No.7572 of 2009) and it is a trite law that declaration by Hon'ble Supreme Court constitutes information on which action u/s 147 of IT Act, could be taken. It could not be termed as change of opinion?"

We have heard Mr.Smarajit Roy Chowdhury, learned senior standing counsel assisted by Mr. Prithu Dudheria, learned counsel appearing for the appellant and Ms. Swapna Das, learned advocate assisted by Mr. Siddharth Das, learned counsel for the respondent.

The short issue which falls for consideration in this case is whether the assessment could have been reopened after four years under Section 147 of the Act. The learned Tribunal on going through the facts found that in the scrutiny assessment made under Section 143(3) of the Act the assessing officer has considered all material facts and has completed the assessment and determined the loss at Rs.1,73,54,450/-. Further, the learned Tribunal found that in the notice issued under Section 148 of the Act, setting out the reasons for reopening, there is no allegation that the assesse failed to disclose all material facts fully and truly. Furthermore, in the reassessment the loss has been slightly reduced and it has been arrived at Rs.1,05,47,793/-.

The learned advocate appearing for the respondent placed reliance on the decision in the case of Principal Commissioner of Income Tax, Corporate Circle – 4(1), Chennai Vs. Mansi Finance (Chennai) Ltd. [2021] 130 taxmann.com 32 (Madras) for the proposition that reopening of assessment beyond four years on the ground that certain expenditure not includible in total income would amount to change of opinion when no negligence was found on the part of the assessee in furnishing necessary materials for completing assessment under Section 143(3) of the Act. Thus, considering the facts brought on record by the learned Tribunal, we find that no question of law much less substantial question of law arises for consideration.

Hence, the appeal is dismissed and the connected application stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

S.Das
AR[CR}