OD-24

ITA/139/2010

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (Income Tax)
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX, KOLKATA-III

-Versus-

M/S. FAIRLUCK COMMERCIAL CO. LTD.

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE RAI CHATTOPADHYAY
Date : 22nd January, 2024

Appearance:
Mr. Smarajit Roychowdhury, Adv.
...for the appellant.

Mr. J. P.Khaita, Sr. Adv.
Mr. Pranit Bag, Adv.
Mr. A. K. De, Adv.
...for the respondent.

The Court : Heard the learned standing counsel for the appellant/revenue and the learned counsel for the respondent/assessee.

By an order dated 30.06.2010, this appeal was admitted on the following substantial question of law:

> *"Whether on the facts and circumstances of the case, the Section 292BB inserted by Finance Act, 2008 has any application purporting to cure the procedural lapse in issuing notice ?"*

Learned counsel for the appellant submits that in view of the provisions of Section 292BB of the Income Tax Act, 1961 (hereinafter referred to as the 'Act, 1961') defect, if any, in not issuing notice under Section 143(2)(ii) of the Income Tax Act, 1961 stands cured and, therefore, the impugned order of the Income Tax Appellate Tribunal in ITA No.1532/Kol/2008 (A.Y. 2002-03) in appeal filed by the Deputy Commissioner of Income Tax and the cross-objection No.111/Kol/2009 filed by the respondent/assessee, deserves to be set aside and the present appeal deserves to be allowed.

Learned counsel for the respondent/assessee submits that Section 292BB is of no help to the appellant inasmuch as this provision came into effect from 01.04.2008 and the entire proceedings have been completed much prior to that. That apart, he further submits that even on merits the appellants have no case.

We have carefully considered the submission of learned counsel for the parties and perused the paper book.

Section 292BB was inserted by Finance Act, 2008 (18 of 2008) with retrospective effect from 01.04.2008. The re-assessment order under Section 147/143(3) of the Act, 1961 was passed by the assessing officer on 29.12.2006. The aforesaid re-assessment order was set aside by the CIT(A) on 08.05.2008 on the ground that no mandatory notice under Section 143(2)(ii) was issued by the assessing officer and despite objection raised by the assessee, no notice in relation to the return filed under Section 147 was issued by the assessing officer. The entire proceedings concluded by the assessing officer under Section 147/143(3) of the Act, 1961 in the year 2006 itself. Section 292BB came into force with effect from 01.04.2008. Therefore, the question raised in the present appeal by the appellant/revenue has no merit.

No other point has been argued before us by learned counsel for the parties.

For all the reasons afore-stated, on facts of the present case, the substantial question of law as framed in the present appeal and the re-produced above, is answered in the negative i.e, in favour of the assessee and against the revenue.

The appeal (ITA/139/2010), accordingly, stands dismissed.

(SURYA PRAKASH KESARWANI, J.)

(RAI CHATTOPADHYAY, J.)

As.