OD-25

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/234/2024
IA NO: GA/1/2024

STAR TRADECOM PRIVATE LIMITED
VS
INCOME TAX OFFICER, WARD 9(4), KOLKATA

BEFORE :

THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK
Date : 25th September, 2024

Appearance :
Mr. Anil Kumar Dugar, Adv.
Mr. Rajarshi Chatterjee, Adv.
…for appellant
Mr. Prithu Dudhoria, Adv.
…for respondent

The Court : This appeal has been filed by the assessee under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated March 18, 2024, passed by the Income Tax Appellate Tribunal, `C' Bench, Kolkata, in ITA No.52/Kol/2023, for the assessment year 2009-10.

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

> Whether the Learned Tribunal erred in law in remitting the matter back to the assessing officer for fresh assessment pursuant to directions given by the Commissioner of Income Tax without deciding the issue involving the question of law that the respondent passed the order under Section 143(3) of the Act without serving the notice under Section 143(2) of the Act, which is a jurisdictional error and goes to the root of the matter as decided by the various courts ?

We have heard Mr. Anil Kumar Dugar, learned counsel appearing for the appellant and Mr. Prithu Dudhoria, learned standing counsel for the respondent-department.

Respondent-department has been served and affidavit of service has been filed. We have directed Mr. Prithu Dudhoria, learned standing counsel, to accept notice for the respondent-department and his appearance in this matter be regularized. The short issue which falls for consideration in this appeal is whether the additional grounds which were raised by the appellant were considered or not. In paragraph 3 of the impugned order, the learned Tribunal has extracted the additional grounds which have been raised by the assessee contending that statutory notice under Section 143(2) of the Act was not issued. They placed reliance on the decision of the Hon'ble Supreme Court in ACIT Vs. Hotel Blue Moon reported at (2010) 321 ITR 362 (SC). As could be seen from paragraph 31 of the impugned order, the learned Tribunal has admitted the additional grounds and asked for the opinion of the Tribunal whether they were legal issues. Revenue has raised an objection stating that such additional grounds have been raised for the first time and not done by the assessee at an earlier point of time. Since the Tribunal has already admitted additional grounds having come to a conclusion that they are legal issues, the assessee cannot be precluded from raising such an issue. Furthermore, there cannot be any estoppel or acquiescence on a legal issue to be canvassed before the Tribunal since the appeal before the Tribunal is a continuation of the proceedings. However, it is seen that the Tribunal while allowing the appeal has set aside the order and remanded the matter back to the Assessing Officer for passing a fresh order after giving a reasonable opportunity to the assessee. However, the learned Tribunal has not decided the jurisdictional issue which was canvassed by the appellant in their additional grounds, which additional grounds were admitted by the learned Tribunal.

Therefore, we are of the view that since the learned Tribunal themselves came to a conclusion that additional grounds are legal issues, the said issues are required to be decided before the Tribunal could proceed on the factual matrix.

For the above reasons, we are of the view that the matter should be remanded back to the Tribunal for a fresh disposal so that the legal issue raised by the appellant in the additional grounds, which were admitted by the Tribunal, to be decided.

For the above reasons, the appeal is allowed.

The impugned order is set aside and the matter is remanded to the Tribunal for a fresh decision in terms as indicated above.

Substantial questions of law are left open.

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

(BIVAS PATTANAYAK , J.)

SN/S.Das
AR(CR)