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

ITAT/208/2023
IA NO: GA/2/2023

PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS
M/S ARMAN ADVISORY PVT LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
DATE : 10TH January, 2024.

Appearance :
Mr. Vipul Kundulia, Adv.
Mr. Amit Sharma, Adv.
..for appellant.

Mr. Soumitra Chowdhury, Adv.
Mr. Avra Mazumder, Adv.
Mr. Samrat Das, Adv.
…for respondent.

The Court: It appears that there is a delay of 342 days in filing the appeal.

We have heard Mr. Vipul Kundalia, Mr. Amit Sharma, learned Counsel appearing for the appellant and Mr. Saumitra Chowdhury, Mr. Avra Mazumder, learned Advocates appearing for the respondent.

We are satisfied with the reasons given in the affidavit filed with the condone delay petition and the delay is condoned.

This appeal filed by the revenue under Section 260A of the Income Tax Act, (the Act) is directed against the order dated 11.03.2022 passed by the Income Tax Appellate Tribunal "A" Bench Kolkata (the Tribunal) in ITA No.

315/Kol/2021 for the assessment year 2012-13. The revenue has raised the following substantial questions of law for consideration:-

i) For that on the facts & circumstances of the case and in law, whether the Hon'ble ITAT, Kolkata Benches, Kolkata has erred out rightly in appreciating the fact that the assessment order passed by the AO U/s 143/263 dated 15.09.2016 acquired the character of order U/s 143(3) read with 264 of the Act, when the A.O. re-assessed the case at loss of Rs.1560/- against original assessment of income at Rs.20,38,00,000/-?

ii) For that on the facts & circumstances of the case and in law, whether the Hon'ble ITAT, Kolkata Benches, Kolkata had erred in ignoring the reversionary powers of Ld. Pr. Commissioner of Income Tax U/s 263 of I.T. Act, 1963 where the commissioner can regard the order passed by the AO erroneous on the ground that the assessing officer should have made further enquiries ?

The short question is whether the assessing officer followed the direction issued by the Principal Commissioner of Income Tax, in exercise of powers under Section 263 of the Act, which was done for the second time after setting aside the first assessment order. The PCIT had directed the assessing officer to conduct de-novo assessment with specific direction issued, which are reproduced as hereinunder;

(i) To carry out proper examination of the books of accounts and bank account of he assessee;

(ii) To carry out proper examination of the books of accounts and bank account of the investors;

(iii) AO to examine the source of the share applicants;

(iv) The AO to examine the identity of the investor and its genuineness;

(v) The AO to complete the assessment at the earliest without waiting for the time barring date.

The learned Tribunal examined the factual position and found that the second assessing officer has scrupulously followed the direction issued by the PCIT and had issued summons to the directors of the thirteen share applicants under Section 131 of the Act and recorded the statements on oath which was placed before the learned Tribunal in the form of a paper book. The learned Tribunal also noted that second assessing officer has approximately put 19 questions to each of the directors and all the 13 share applicants. After examining the entire facts and circumstances the learned Tribunal has come to the conclusion that the direction issued by the PCIT while exercising his jurisdiction under Section 263 of the Act has been scrupulously followed.

Thus, we find that no question of law much less substantial questions of law arising for consideration.

Accordingly, the appeal is dismissed.

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(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA,J.)

pkd/GH.