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

ORIGINAL SIDE

ITA/79/2022
PRINCIPAL COMMISSIONER OF INCOME TAX-1, SURAT
VS
DIVINE LIGHT FINANCE LTD.

BEFORE :
THE HON'BLE JUSTICE SURYA PRAKASH KESARWANI
And
THE HON'BLE JUSTICE AJAY KUMAR GUPTA
Date : 3rd July, 2024

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

1. Heard Sri Soumen Bhattacharjee, learned junior standing counsel for the appellant/revenue. None has appeared for the respondent/assessee.

2. This appeal was admitted by this Court by order dated 31.10.2022 on the following substantial question of law :

"*i) Whether the ITAT has erred in law in quashing the Assessment Order passed by the Assessing Officer by holding that it suffered from lack of territorial jurisdiction and thereby allowing the assessee's appeal without considering the fact that as on the date of passing Assessment Order, the Pan was with the ITO, Wd. 9(1), Kolkata from 12/12/2002 to 31/05/2018?*

ii) Whether the plea of territorial jurisdiction raised at the time of hearing before the Tribunal, can *be entertained at all after the lapse of time limit specified in Section 124(3) and in view of Section 292BB of the Income Tax Act, 1961?"*

3. The assessment of the respondent/assesse was completed by the ITO Ward No.12(2), Kolkata under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act, 1961') vide order dated 21.3.2013. After completion of the assessment, as aforesaid, a notice dated 19.8.2014 under Section 263 of the Act, 1961 was issued by the Commissioner of Income Tax, Kolkata – IV for the assessment year in question i.e. 2014-15. By Notification No.SO 2752(E) dated 22.10.2014 the jurisdiction over the assessee was transferred to the Commissioner of Income Tax – 11, Kolkata from the Commissioner of Income Tax – IV, Kolkata. However, the Commissioner of Income Tax – IV, Kolkata passed an order dated 19.1.2016 under Section 263 of the Act, 1961 in respect of respondent/assessee. Thereafter, consequential order dated 29.12.2016 was passed by the ITO Ward No.9(1), Kolkata under Section 143 for the assessment year 2014-15. Aggrieved with the aforesaid assessment order, the respondent/assessee filed an appeal before the CIT(Appeals) which was dismissed by order dated 24.4.2019. Aggrieved with the order of the CIT(Appeals) – 15, Kolkata, the respondent/assessee filed an appeal being

ITA/1591/Kol/2019, assessment year (2014-15) before the Income Tax Appellate Tribunal, Bench 'SMC' , Kolkata for which an additional ground raising question of territorial jurisdiction of the CIT-IV, Kolkata to pass orders under Section 263 of the Act, 1961 was also taken. The ITAT found that CIT-11, Kolkata was having jurisdiction in view of the Notification No.SO 2752(E) dated 22.10.2014 issued by the CBDT and, thus, the CIT-IV, Kolkata who passed the order under Section 263 dated 19.1.2016 was not having jurisdiction over the respondent/assessee. Therefore, the ITAT concluded that the order passed by the CIT-IV, Kolkata under Section 263 of the Act, 1961 was without jurisdiction. The ITO, Ward No.12(2) Kolkata who passed the original assessment order has also written a letter dated 28.10.2014 to the ITO Ward No.6(4), Kolkata transferring the necessary files consequent to the change of jurisdiction over the respondent/assessee pursuant to the aforesaid Notification No.SO.2752(E) dated 22.10.2014 issued by the CBDT.

4. Learned counsel for the appellant has not disputed the facts afore-noted by us which are well-reflected from paragraphs 4 and 6 of the impugned order of the ITAT but he submits that since the respondent/assessee has not raised

any objection as to the territorial jurisdiction within the time allowed under Section 124(3) of the Act, 1961, therefore, the Tribunal should not have entertained the ground of territorial jurisdiction. No other point has been argued before us by learned counsel for the appellant.

5. We have carefully considered the submissions of the learned counsel for the appellant and perused the paper book.

6. We find that the facts as afore-noted have not been disputed before us. Therefore, it remains undisputed that vide Notification dated 22.10.2014 the jurisdictional Commissioner of Income Tax was the Commissioner of Income Tax – 11, Kolkata and not the Commissioner of Income Tax – IV, Kolkata who passed the order dated 19.1.2016 under Section 263 of the Act, 1961. Now, the question arises whether Section 124(3) of the Act, 1961 shall come into play as argued by learned counsel for the appellant?

7. Section 124 of the Act, 1961 is reproduced below :

> "*(3) No person shall be entitled to call in question the* ***jurisdiction of an Assessing Officer****-*
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> *(a) where he has made a return "[under sub-section (1) of section 115WD or under sub-section (1) of section 139], after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 142 or [sub-section (2) of section*

115WE or sub-section (2) of section 143] or after the completion of the assessment, whichever is earlier;

(b) where he has made no such return, after the expiry of the time allowed by the notice under [sub-section (2) of section 115WD or sub-section (1) of section 142 or under sub-section (1) of section 115WH or under section 148 for the making of the return or by the notice under the first proviso to section 115WF or under the first proviso to section 144] to show cause why the assessment should not be completed to the best of the judgment of the Assessing Officer, whichever is earlier.

[(c) where an action has been taken under section 132 or section 132A, after the expiry of one month from the date on which he was served with a notice under sub-section (1) of section 153A or sub-section (2) of section 153C or after the completion of the assessment, whichever is earlier."

8. From perusal of the provisions of Section 124(3) of the Act, 1961 it is clear that it has no application with respect to the proceedings under Section 263 of the Act, 1961. The power of CBDT to confer jurisdiction under the Act, 1961 is undisputed. Neither the appellant has disputed the issuance of Notification dated 22.10.2014 by the CBDT nor it has been disputed by learned counsel for the appellant that the Jurisdictional Commissioner of Income Tax with respect to the respondent/assessee was the Commissioner of Income Tax – 11, Kolkata when the order dated 19.1.2016 under Section 263 of the Act, 1961 was passed. Thus, as on the date when the order under Section

263 of the Act dated 19.1.2016 was passed by the Commissioner of Income Tax – IV, Kolkata, he was not the jurisdictional Commissioner and, thus, he inherently lacked jurisdiction to pass the order dated 19.01.2016 under Section 263. So far as Section 292BB is concerned, as reflected in substantial question of law no.(ii) afore-quoted; we find that Section 292BB has no application on facts and circumstances of the present case. It relates to deemed service of notice and not to the territorial jurisdiction of an authority under the Act.

9. Where an authority or court lacks inherent jurisdiction in passing a decree or order, the decree or order passed by such authority or court would be without jurisdiction, *non est* and *void abinitio*. Lack of territorial jurisdiction of the Commissioner of Income Tax – IV who passed the order dated 19.01.2016 under Section 263 of the Act, 1961 to exercise supervisory jurisdiction goes to the root of the matter and strikes at his very authority to pass the said order. Such defect is basic and fundamental and, therefore, the order passed by the aforesaid C.I.T having no territorial jurisdiction over the respondent/assessee, is nullity. Order or decree passed by a court having no jurisdiction, has been held to be nullity by Hon'ble

Supreme Court in Kiran Singh Vs. Chaman Paswan **AIR 1954 SC 340**, Hira Patari Vs. Kali Nath **AIR 1962 SC 199**, Balwant N Vishwamitra and Others Vs. Yadav Sada Shiv Mull **(2004) 8 SCC 706**.

10. The question of territorial jurisdiction as raised by the respondent/assessee has gone to the very root of the case. Such a question could be raised at any stage of the proceedings, to contend that the order passed by the Commissioner of Income Tax under Section 263 of the Act, 1961 was without jurisdiction. In other words, in appeal the ground of territorial jurisdiction on the undisputed facts of the present case, as afore-noted, was rightly entertained by the ITAT.

11. For all the reasons afore-stated, we do not find any illegality in the impugned order of the ITAT. The appeal has not merit and is, therefore, dismissed. The substantial questions of law are answered in favour of the assessee and against the revenue.

(SURYA PRAKASH KESARWANI, J.)

(AJAY KUMAR GUPTA, J.)

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