

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

RESERVED ON: 19.01.2024
DELIVERED ON: 25.01.2024

CORAM:

**THE HON'BLE MR. CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

ITA NO. 31 OF 2015

COMMISSIONER OF INCOME TAX, KOLKATA - XII

VERSUS

GOPAL SHARMA

Appearance:-

Mr. Soumen Bhattacharyee, Learned Senior Standing Counsel.

.....For the Appellant.

Mr. S.M. Surana, Sr. Adv.

Mr. Bhaskar Sengupta, Adv.

.....For the Respondent.

JUDGMENT

(Judgment of the Court was delivered by T.S. Sivagnanam, CJ.)

1. This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated December 12, 2014 passed by the Income Tax Appellate Tribunal “B” Bench, Kolkata in ITA No. 416/Kol/2014 for the assessment year 2009-2010. The appeal was admitted on 15.10.2015 on the following substantial questions of law:-

- (a) *Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal, “B” Bench erred in law in quashing the order under Section 263 of the Income Tax Act, 1961 passed by the Commissioner of Income Tax, Kolkata-XII?*
- (b) *Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, “B” Bench erred in law in holding that the Commissioner of Income Tax could not establish order under Section 143(3) as erroneous and prejudicial to the interest of the revenue in spite of the fact that the Commissioner of Income Tax has pointed out in his order that the assessing officer did not conduct proper enquiries on issues of valuation of closing stock and commission payment?*
- (c) *Whether the impugned order bad, arbitrary, illegal, perverse and the same is nothing but a total non-application of mind of the Income Tax Appellate Tribunal, Kolkata and the same is liable to be set aside and/or quashed?*

2. We have heard Mr. Soumen Bhattacharyee, learned Standing Counsel appearing for the appellant and Mr. S.M. Surana, learned Senior Advocate assisted by Mr. Bhaskar Sengupta, learned advocates appearing for the respondent.
3. The scrutiny assessment for the year under consideration was completed by order dated 23.09.2011 determining the total income of the assessee at Rs. 3,19,86,520/-. The Commissioner of Income Tax, Kolkata – XII (CIT) invoked his powers under Section 263 of the Act alleging that the assessing officer has completed the assessment in hasty manner and has accepted the return of income without making necessary enquiry and verification and therefore the order is prejudicial to the interest of the revenue. Accordingly, a show cause notice was issued to the assessee to answer the issues namely:-
- (i) Under statement in closing stock
 - (ii) Secured loan
 - (iii) Commission
4. The assessee submitted their reply however, the CIT rejected the contention raised by the assessee and affirmed the proposal in the show cause notice and directed the assessing officer to make necessary investigation on the three issues pointed out and pass orders in accordance with law. Aggrieved by such order, the assessee preferred appeal before the tribunal. The tribunal allowed the appeal and challenging the said order this appeal has been preferred by the revenue. The substantial questions of law on which the appeal was admitted is though three in number all pertain to the correctness of exercise of powers by the CIT under Section 263 of the

Act. With regard to the alleged allegation of understatement of closing stock, the assessee has submitted that they had valued the stock at cost on First-in First-out basis or the market price whichever is less that they have duly maintained complete stock record in their computer system item wise which contains full details of opening stock, purchases made, sales made and closing stock giving quantity, rate and value. Further the assessee stated that the computer system automatically computes the value of closing stock on FIFO basis and there is no change and/or possibility of any understatement in valuation of the closing stock. The assessee had furnished item wise details of the closing stock for the entire amount and also furnished the entire stock records pertaining to 12 items selected on random basis and sought to establish that the valuation of closing stock has been done at cost on FIFO basis and there is no understatement in the valuation of the closing stock.

5. Further the assessee produced the closing stock valuation details of all the items having value of Rs. 5,00,000/- or more to demonstrate that the closing stock has been correctly valued and there is no understatement at all. The learned tribunal examined the factual aspects as well and noted that the assessee has furnished full details of the stock and the revenue was not able to point out that there is a shortage of stock or how the value declared by the assessee is less in terms of the value as well as in the terms of the quantity. Further the tribunal has also noted that the CIT has not dealt with the aspect as to whether the details were not available before the assessing officer or not during the course of the original proceedings.

6. The factual aspects relating to the other two issues, were also elaborately considered by the learned tribunal. The tribunal pointed out that the records were available before the assessing officer during the assessment proceedings as well as before the CIT in the initial proceedings and the assessee also filed a paper book before the tribunal enclosing item wise details of closing stock valuation. The other documents which were filed by the assessee were also taken note of by the tribunal which includes the details filed before the bank namely the stocks statements for hypothecation and the value which was found to be exactly identical. Thus, taking note of the aspect that the stock statement submitted by the bank and the stock as per the stock register were exactly matching with each other, the tribunal agreed with the assessee's submission that the assessing officer has conducted due enquiry and thereafter completed his scrutiny assessment. The tribunal also noted that the CIT in his order under Section 263 has only observed that there is a possibility of understatement in the closing stock without a specific finding on the said aspect. Thus, the case on hand is not one such case where no enquiry was conducted by the assessing officer.

7. Mr. Soumen Bhattacharyee referred to the decision of the Hon'ble Supreme Court in ***Commissioner of Income Tax Versus British Paints India Limited***¹. The said decision pertains to the methods of valuation wherein the Hon'ble Supreme Court held that what is profit of the trade or business is a question of fact and it must be ascertained, as all facts must be ascertained with reference to the relevant evidence and not on doctrines

¹ [1991] 54 Taxman.com 499 (SC)

or theories. In the case on hand, the assessing officer has in fact, done an exercise with regard to the factual aspects more particularly with regard to the allegations of under valuation of the closing stock. Therefore, the decision does not render assistance to the case of the appellant.

8. Mr. S.M. Surana, learned Senior Advocate placed reliance on the decision in the ***Income Tax Officer Versus DG Housing Projects Limited***² wherein the circumstances under which the power under Section 263 of the Act could be resorted to was elaborately discussed. Reliance was also placed in the decision of this Court in ***Principal Commissioner of Income Tax - 1, Kolkata Versus M/s. Britannia Industries Limited*** in ***ITAT No. 211 of 2022*** dated 23.12.2022 and ***Principal Commissioner of Income Tax Asansol Versus Gunja Samabay Krishi Unnayan Samity Limited*** in ***ITAT No. 270 of 2022*** dated 13.01.2023 for the same proposition.

9. In the preceding paragraphs, we have noted as to the exercise conducted by the assessing officer in the scrutiny assessment which was examined by the tribunal and found that the due enquiry conducted by the assessing officer and after perusal of the documents, stock register etc. the assessment was completed. The tribunal also re-appreciated the factual position and found that the CIT while exercising power under Section 263 of the Act has not recorded a specific finding that it is as case of no enquiry by the assessing officer rather the observation was there could be a possibility of understatement of the closing stock. Thus, we are satisfied that the tribunal rightly interfered with the order passed by the CIT and allowed the appeal of the assessee.

² [2012] 343 ITR 329 (Del)

10. In the result, the appeal is dismissed and the substantial questions of law are answered against the revenue.

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

I Agree

(HIRANMAY BHATTACHARYYA, J.)

(P.A – SACHIN)

