

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

ITAT/252/2023
IA NO: GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX 1 KOLKATA
VS
FATEH CHAND CHINDALIA

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 22nd January, 2024

Appearance :
Mr. Vipul Kundalia, Sr. Adv.
Mr. Soumen Bhattacharjee, Adv.
Ms. Oindrila Ghosal, Adv.
...for appellant
Mr. S.M. Surana, Sr. Adv.
...for respondent

The Court:- This appeal by the revenue filed under section 260A of the Income Tax Act [the Act] is directed against the order dated 16.3.2023 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata [Tribunal] in ITA No.185/Kol/2022 for the assessment year 2011-12.

The revenue has raised the following substantial questions of law for consideration.

- [I] Whether the learned Tribunal has committed substantial error in law by observing that the Assessing Officer has examined the particular source of investments and the assessee has fully explained the said source of investments ?
- [II] Whether the learned Tribunal has committed substantial error in law in quashing the order under Section 263 of the said Act ignoring the fact that the Assessing Officer in his order under Section 143[3]

read with Section 147 dated 28.12.2018 concluded that the source of investment is made out of accumulated Bank balance of the assessee, whereas as per records the said accumulated Bank balance has come from sale of penny share M/s. Tuni Textiles Ltd.

After elaborate hearing of the learned Advocates for the parties and carefully perusing the materials placed on record, we find that the learned Tribunal was fully justified in following the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax, Chennai vs. M/s. Alagendran Finance Ltd., [2007] 293 ITR 1 [SC]. In paragraph 15 of the judgment, it has been held as follows.

“ We, therefore, are clearly of the opinion that keeping in view the facts and circumstances of this case and, in particular, having regard to the fact that the Commissioner of Income Tax exercising its revisional jurisdiction reopened the order of assessment only in relation to lease equalization fund which being not the subject of the reassessment proceedings, the period of limitation provided for under sub-section [2] of Section 263 of the Act would begin to run from the date of the order of assessment and not from the order of reassessment. The revisional jurisdiction having, thus, been invoked by the Commissioner of Income Tax beyond the period of limitation, it was wholly without jurisdiction rendering the entire proceeding a nullity.”

The Tribunal examined the facts of the case and found that the doctrine of merger did not apply and the period of limitation would commence from the date of original assessment and not from the reassessment since the latter had not anything to do with the said item of income.

Thus, we find there is no error in the order passed by the Tribunal.

Accordingly, the appeal is dismissed and the questions of law are answered against the revenue.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.