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

ITAT/261/2023
IA NO: GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS
MISRILALL MINES PVT LTD

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

Appearance :
Ms. Smita Das De,Adv.
Mr. Prithu Dudhoria, Adv.
…for appellant
Mr. Ananda Sen, 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 28.3.2023 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata [Tribunal] in ITA No.259/Kol/2022 for the assessment year 2017-18.

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

[I] Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law to quash the order under Section 263 of the IT Act, 1961 on the ground that Pr. CIT-II, Kolkata has o revisionary jurisdiction on debatable matte?

[II] Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was justified in law to observe that the issue of adjustment of setting off and carry forward capital loss [STT Paid] with non STT paid capital gain is a debatable issue, despite the fact that the issue of long term profit/loss on shares, securities and mutual fund is categorically covered under Section 10[38] of the IT Act, 1961 and can not be termed as debatable?

Heard learned Advocates on either side.

The short question involved in this appeal is whether the Principal Commissioner of Income Tax should have exercised jurisdiction under Section 263 of the Act. The learned Tribunal has elaborately examined the factual position and noted that there were two views possible which should be taken by the assessing officer and the assessing officer has taken one of the views. Thus, the Tribunal came to the conclusion that the jurisdiction under Section 263 is not available to the PCIT when the case is a debatable issue. In this regard, several decisions have been referred to by the Tribunal, in particular, the decision of the Hon'ble Supreme Court in Malabar Industrial Co. Ltd. And Max India Ltd..

Thus, we find that the conclusion of the Tribunal cannot be doubted. In the result, the appeal is dismissed and the substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.