

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

ITAT/267/2023
IA NO: GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 2 KOLKATA
VS
M/S PEARL TRACOM PVT LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
DATE : 8TH January, 2024.

Appearance :
Ms. Smita Das De, Adv.
Mr. Prithu Dudhoria, Adv.
..for appellant
Mr. Pratyush Jhunjhunwala, Adv.
...for respondent

The Court :- It appears that there is a delay of 112 days in filing the appeal. We are satisfied with the reasons given by the appellant department for not preferring the appeal within the period of limitation.

Hence, the delay in filing the appeal is condoned.

This appeal by the revenue under Section 260A of the Income Tax, 1961 is directed against the order dated March 6, 2023 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (the Tribunal) in ITA No. 495/Kol/2022 for the assessment year 2012-13.

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

- (a) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law by quashing the order passed by the Pr. CIT on the ground that the Assessing Officer had

conducted detailed enquiry after making proper application of mind and the Assessee had filed complete documentary evidence to the satisfaction of Assessing Officer ?

- (b) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in not considering the application of explanation two to Section 263, whereunder an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interest of revenue, if in the opinion of the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, the order is passed without making enquiries or verification which would should have been made ?

We have heard learned Counsel on either side.

The short question which falls for consideration in this appeal is whether the Principal Commissioner of Income Tax was justified in invoking his jurisdiction under Section 263 of the Act for the second time from the same issue. The learned Tribunal after carefully going through the facts of the case found that in the second round of assessment proceeding the assessing officer issued notice under Section 142(1) of the Act and called for complete details about share capital and share premium received by the assessee company as well as complete details of the investors. The details were filed to the satisfaction of the assessing officer. That apart the Tribunal found that the directors of the investor companies personally appeared before the Assessing officer in response to the summons issued under Section 131 of the Act and the statement on oath was recorded and the books of accounts were also verified. Thus the Tribunal was satisfied that complete enquiry was conducted by the assessing officer when the matter went before him for the second time pursuant to the order passed under Section 263 of the Act. The Tribunal in our view rightly held that Principal

Commissioner of Income Tax merely gave directions but did not give any reasons for coming to a conclusion that the assessment should be revised for the second time. Furthermore, the Tribunal has noted that assessee not only filed the complete details in the first round of assessment and again in the second round of assessment and demonstrated clearly by producing records that the transactions were genuine. Thus the Tribunal was satisfied that the view taken by the assessing officer in the second round of the proceedings was permissible under the law. The Tribunal has also noted another decision of the Coordinate Bench where the facts appear to be more or less identical to the case on hand. Thus on reappraisal of the factual position the Tribunal has found that it is not the case of non application of mind by assessing officer nor the case of failure of reappraisal of facts.

Thus the Tribunal on facts rightly granted relief to the assessee. Thus We find no questions of law much less substantial questions of law arising for consideration in this appeal.

Accordingly, the appeal stands dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(SUPRATIM BHATTACHARYA,J.)