OD – 28

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

ORIGINAL SIDE

ITAT/276/2023
IA NO: GA/2/2023

PRINCIPAL COMMISSIONER OF INCOME TAX 1 KOLKATA
VS
M/S CHOTANAGPUR PETROLEUM AGENCY

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 31st January, 2024

Appearance :
Mr.Om Narayan Rai, Adv.
Mr.Prithu Dudheria, Adv.
...for the appellant.

Mr.Pratyush Jhunjhunwala, Adv.
Ms.Sretapa Sinha, Adv.
...for the respondent.

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 24th April, 2023 passed by the Income Tax Appellate Tribunal, B-Bench, Kolkata (the Tribunal) in ITA No.161/Kol/2022 for the assessment year 2017-18.

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 was erred in holding that the Assessing Officer has examined the cash sales including the cash book and the assessee has duly explained the said cash sales?*

(b) WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was erred in law in quashing the order under Section 263 of the Income Tax Act, 1961 without considering the fact that the Assessing Officer in his order under Section 143(3) dated December 4, 2019 concluded the cash sales after complete examination of details, whereas as per records there was a differences of cash sales amounting to Rs.67,85,064/- as per cash flow statement?"

We have heard Mr. Om Narayan Rai, learned senior standing counsel assisted by Mr. Prithu Dudheria, learned standing counsel appearing for the appellant/revenue and Mr. Pratyush Jhunjhunwala, learned counsel appearing for the respondent/assessee.

The short issue which falls for consideration in the instant case is whether the Commissioner of Income Tax (Appeals) could have invoked his jurisdiction under Section 263 of the Act. The learned Tribunal after considering the scope of the said provision and taking note of the decision of the Hon'ble Supreme Court in Malabar Industrial Co. Ltd. Vs. CIT [2000] 243 ITR 83 (SC) examined the facts of the case based on the documents which were placed by the assessee in the form of paper books and examination of the factual position, the Tribunal concluded that the transaction is merely a sales reversal entry and not a case of unexplained expenditure. Furthermore, the Tribunal also on facts found that all the details of cash sales including the cash book have been examined by the assessing officer in detail while carrying out assessment proceeding which was scrutiny assessment and the Tribunal also found that the CIT(A) while exercising his power under Section 263 had committed an error in referring to other issue which was not required to be dealt with by the assessing officer. Furthermore, the Tribunal on facts records that no prejudice is caused to the revenue due to accounting system consistently followed by the assessee and held that the order of the assessing officer is neither erroneous nor prejudicial to the interest of the revenue as the assessing officer has examined all the details thoroughly. Thus, we find that there is no substantial question of law arising for consideration.

Hence, the appeal fails and the same is dismissed. The connected application stands closed.

(T.S. SIVAGNANAM)
(CHIEF JUSTICE)

(SUPRATIM BHATTACHARYA, J.)

S.Das/