OD – 31

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

ORIGINAL SIDE

ITAT/287/2023
IA NO: GA/2/2023

PRINCIPAL COMMISSIONER OF INCOME TAX 5 KOLKATA
VS
SANAT SINGHA ROY

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

Appearance :
Mr.Amit Sharma, Adv.
...for the appellant.

Mr.Abhratosh Majumdar, Sr. Adv.
Mr.Avra Mazumder, Adv.
Mr. Samrat Das, Adv.
Mr.Kausheyo Roy, 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 3rd April, 2023 passed by the Income Tax Appellate Tribunal, C-Bench, Kolkata (the Tribunal) in ITA No.624/Kol/2020 for the assessment year 2011-12.

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 Hon'ble ITAT erred in law in quashing the reopening of the assessment u/s 147 of the Income Tax Act, 1961 and deleting the consequential additions made by the Assessing Officer* *even though the Assessing Officer had recorded reason to believe that income of the assessee had escaped assessment for the A.Y. 2011-12 which is a prerequisite for reopening assessment u/s 147 and also communicated the same to the assessee?*

(ii) Whether on the facts and in the circumstances of the case, the order of the Hon'ble ITAT suffers from perversity in quashing the reopening of the assessment u/s 147 based on the observation of the Ld. CIT(A) holding that the assessee was a commission agent and no income had escaped assessment?

We have heard Mr. Amit Sharma, learned standing counsel appearing for the appellant/revenue and Mr. Abhratosh Majumdar, learned senior counsel assisted by Mr.Avra Mazumder, learned counsel appearing for the respondent/assessee.

The short question which falls for consideration is whether the assessment of jurisdiction by the assessing officer under Section 148 of the Act was justified. The Commissioner of Income Tax (Appeals) – 15, Kolkata [CIT(A)] by an order dated 28th February, 2020 partly allowed the appeal filed by the assessee. At this juncture, it would be relevant to note the finding recorded by the CIT(A) in paragraph 5.3 of its order wherein after examining the facts the CIT(A) has come to the conclusion that no income can be said to have escaped assessment in the hands of the appellant as could be seen from the grounds canvassed by the revenue before the

Tribunal. This finding was not challenged by the revenue and the ground raised was only with regard to the estimation of commission at 2% as done by the CIT(A). To be noted that before the Tribunal the assessee had filed an application under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963 contending that the CIT(A) had no jurisdiction to estimate the commission that too an appeal filed by the assessee before the CIT(A). This aspect was rightly considered by the Tribunal and the relief was granted to the assessee. That apart, the learned Tribunal also examined the reasons which are recorded by the assessing officer for reopening the assessment and on facts found that the reopening was wholly unjustified. We find that there is no ground made out by the revenue to interfere with the order passed by the learned Tribunal. Hence, the substantial questions of law are answered against the revenue.

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

(T.S. SIVAGNANAM)
(CHIEF JUSTICE)

(SUPRATIM BHATTACHARYA, J.)

S.Das/