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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/73/2025
IA NO: GA/2/2025

PRINCIPAL COMMISSIONER OF INCOME TAX 13, KOLKATA
VS
RAJESH KUMAR JALAN

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 3rd July, 2025.

Mr. Tilak Mitra, Adv.
Mr. Prithu Dudhoria, Adv....for appellant.

Mr. Saumya Kejriwal, Adv.
Ms. Ananya Rath, Adv.
Mr. Navin Mittal, Adv.
Mr. Debargha Banerjee, Adv. ...for respondent.

The Court : This appeal by the Income Tax department has been filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 12.6.2024 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata (the Tribunal) in ITA/255/Kol/2024 for the assessment year 2016-17.

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

a) WHETHER in facts and in the circumstances of the case the Ld. Income Tax Appellate Tribunal was not justified in law in quashing the order U/s. 263 without considering the circumstantial evidence brought on record by the Assessing Officer and also without considering the report of the Commercial Tax Authorities and in absence of any enquiry report of Police Authority that the entire amount credited to the bank account of the

assessee in actual turnover of the assessee for the Assessment Year 2016-17 ?

b) WHETHER in facts and in the circumstances of the case and in law the orders of the Ld. Income Tax Appellate Tribunal suffers from perversity as it ignores the facts brought on record by the Assessing Officer establishing the fact that the assessee has not discharged the burden of proof lies on him with the aim to evade tax ?

We have heard Mr. Tilak Mitra, learned senior standing counsel assisted by Mr. Prithu Dudhoria, learned advocate for the appellant/department and Mr. Saumya Kejriwal, learned counsel for the respondent/assessee.

The short issue which falls for consideration is whether the learned Tribunal was right in allowing the assessee's appeal and setting aside the order passed by the Commissioner under section 263 of the Act. The order passed by the learned Tribunal is an elaborate order wherein all the factual issues have been thoroughly dealt with apart from noting the legal position. The assessee's consistent case was that he had not opened any bank account rather somebody else impersonated him by using his identity card and he came to know of it when he received information from the Sales Tax Authority, Bureau of Investigation, Commercial Taxes. Though such a stand was pleaded before those agencies none of the agencies has undertaken an inquiry or rendered any finding on the said aspect. The learned Tribunal faulted the department for not issuing the notice to the police authorities or to the Commercial Tax Investigating Authority and calling for a report. It was specifically noted that while dealing with the assessee's explanation to the show cause notice the Commissioner has not recorded any finding rather shifted the onus on the assessee to prove the negative. The learned Tribunal rightly held that the revenue has to first determine as to whether the bank account belonging to the assessee, more particularly when he has been emphasizing that the bank account do not belong to him and he has lodged an

FIR with the police authorities. This aspect has been ignored by the Commissioner while exercising power under section 263 of the Act, more importantly, when the assessee filed the report to the show cause notice they had specifically pleaded that as against the assessment order appeal had been filed before the Commissioner of Income Tax (Appeals) and copy of the appeal memorandum was annexed to the reply. In such circumstances, the Commissioner could have invoked the power under section 263 of the Act as there is a complete bar when an appeal is pending against an order of assessment. That apart, we find that the department has not undertaken any exercise to determine as to whether who is the actual account holder and who else is the proprietor and who is conducting trading business of such magnitude. That apart, all the issues which were subject matter of the 263 proceeding, was pending at the relevant point of time before the Commissioner of Income Tax (Appeals). With these reasoning the assessee's appeal was allowed by the Tribunal. After the order was passed by the learned Tribunal the appeal filed by the assessee before the Commissioner of Income Tax (Appeals) has been allowed and the said order has become final. Apart from that the assessing officer reopened the assessment and an assessment order was passed under section 147 of the Act, which was appealed against and the said appeal has also been allowed in favour of the assessee and the department has not challenged the said order and the same attained finality. Copy of the order passed by the appellate authority has been placed before us for consideration.

Thus, we find that the learned Tribunal was fully justified in allowing assessee's appeal. At this juncture, we take note of the decision in the case of Smt. Renuka Philip vs. ITO, [2018] 409 ITR 567 (Mad)], wherein the court took into consideration Clause (c) of Explanation 1 to section 263 of the Act wherein it is clearly stated that

when an appeal is pending before the Commissioner, the exercise of jurisdiction under section 263 is barred.

For all the above reasons, we find no grounds to interfere with the order passed by the learned Tribunal. Accordingly, the appeal fails and the same is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the application, GA/2/2025 stands dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)