OD – 16

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

ORIGINAL SIDE

ITAT/82/2025
IA NO: GA/2/2025
PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS
MANISH JAIN

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S SIVAGNANAM
And
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
Date : 3rd July, 2025

<u>*Appearance :*</u>
Mr. Tilak Mitra, Adv.
Mr. Amit Sharma, Adv.
..for the appellant.

Mr. Subash Agarwal, Adv.
Mr. Rajarshi Chatterjee, Adv.
Ms. Suman Sahani, Adv.
Mr. Amit Shaw, Adv.
..for 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 May 3, 2024 passed by the Income Tax Appellate Tribunal, B - Bench, Kolkata (the Tribunal) in ITA/638/Kol/2022 for the assessment year 2010-11.

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 Tribunal has committed substantial error in law in quashing the reassessment proceedings under Section 147 of the Income Tax Act, 1961 on the premise that the notices under Section

148 and Section 143(2) of the Income Tax Act, 1961 were not issued by the transferee Assessing Officer post transfer?

ii) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law to quash the reassessment proceedings by holding the same to be without jurisdiction without considering that notices under Section 148 and 143(2) of the Income Tax Act, 1961 were already issued by the ITO Ward-61(4), Kolkata prior to transfer of the case to ITO Ward-6(1), Kolkata and as per the provisions contained under Section 127(4) and Section 129 of the Income Tax Act, 1961 there is no requirement of issuance of issuance of notices under Section 148 and 143(2) of the Income Tax Act, 1961 afresh by the transferee Assessing Officer if such notices were already issued by the transferor Assessing Officer?

iii) Whether on the facts and in the circumstances of the case the Learned Tribunal has committed substantial error in law by failing to consider that in terms of the provisions contained under Section 127(4) of the Income Tax Act, 1961 read with Section 129 of the Income Tax Act, 1961, non-issuance of notices under Section 148 and 143(2) of the Income Tax Act, 1961 by the transferee Assessing Officer would not render the reassessment proceedings bad when such notices were already issued by the transferor Assessing Officer?

We have heard Mr. Tilak Mitra, learned senior standing counsel appearing for the appellant/revenue and Mr. Subash Agarwal, learned counsel appearing for the respondent/assessee.

The short issue which falls for consideration in the instant case is whether the assessment order passed under Section 147 read with 143(3) of the Act dated 11.12.2017 was passed by the officer having jurisdiction. The undisputed facts are that the assessee had filed a return of income with the Assistant Commissioner, Range – 24, Kolkata. However, the notice under Section 148 of the Act dated 31.3.2017 and Section 143(2) of the Act dated 6.7.2017 were issued by the Income Tax Officer, ward – 61(4), Kolkata. The assessee filed an objection dated 25.8.2016 stating that the Income Tax Officer, ward – 61(4), Kolkata does not have jurisdiction over his case and objected to the issuance of the notice. The objection raised by the assessee was accepted and, accordingly, the case was transferred to the Income Tax Officer, ward – 6(1) and the assessment was framed. The learned Tribunal found that it is an admitted fact that the notice under Section 148 as well as under Section 143(2) were issued by the Income Tax Officer, ward – 61(4), Kolkata and no notice was issued by the Income Tax Officer, ward – 6(1). In this regard we take note of the decision in case of PCIT Vs. Bhagyalaxmi Conclave Pvt. Ltd., reported at 2022(12) TMI 1514 wherein the appeal filed by the department was dismissed upholding the order passed by the learned Tribunal which quashed the assessment proceedings on the ground of lack of jurisdiction. The facts of the case are identical and, therefore, the decision in the case of Bhagyalaxmi Conclave Pvt. Ltd. will clearly apply to the facts of the case on hand. Thus, the Tribunal having rightly taken note of the undisputed factual position and applied the legal principle. We find no grounds to interfere with the impugned order. In the absence of any question of law much less substantial question of law, this appeal cannot be entertained.

For the above reasons, the appeal fails and is dismissed. Consequently, the connected application stands closed.

(T.S SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)

S.Das/
AR[CR]