

OD - 13

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

PRESENT :

THE HON'BLE CHIEF JUSTICE T.S SIVAGNANAM

And

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

ITAT/240/2024
IA NO: GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 2 KOLKATA
VS
PEARL TRACOM PVT LTD

For Appellant : Mr. Prithu Dudhoria, Advocate

For Respondent : Mr. Pratyush Jhunjhunwalla, Advocate
Ms. Sretapa Sinha, Advocate
Ms. Sruti Dutta, Advocate
Ms. Sakshi Singhi, Advocate

Heard on : July 1, 2025

Judgment on : July 1, 2025

T.S. SIVAGNANAM, CJ : This appeal by the income tax department has been filed under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated November 10, 2023 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (the Tribunal) in ITA/375/Kol/2023 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 was not justified in law as well as in facts by rejecting the appeal of the revenue without adjudicating the merits of the appeal?”

b. WHETHER on the facts and in the circumstances of the case and in law, the order of Learned Income Tax Appellate Tribunal is perverse as it has failed to adjudicate on the facts that the issue covered in order u/s. 263 was different from the issues on the basis of which case was selected for re-assessment u/s. 147, since the order u/s. 263 was passed with a direction to verify only the specific issue of verification of identity, creditworthiness of the shareholders and also the genuineness of transactions relating to share capital and premium and not all credits in bank account while the reassessment proceedings u/s.147 was initiated after due verification of information received regarding accommodation entry of Rs.2,48,50,000/- which was credited to the bank accounts of the assessee through layering by Sh. Sandeep Roy, Prop. Of Sarika Trading Co.?”

c. WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal was not justified in law as well as in facts by referring to the decision of Hon’ble SC in the case of SM Overseas (P) Ltd. v. Commissioner of Income Tax reported in 450 ITR I(SC) [07-12-2022], since the case law referred to by the Learned Income Tax Appellate Tribunal related to initiation of reassessment proceedings u/s. 147 pending proceedings u/s. 154?”

We have heard Mr. Prithu Dudhoria, learned senior standing counsel for the appellant/department and Mr. Pratyush Jhunjhunwalla, learned counsel for the respondent/assessee.

The assessee preferred appeal before the learned Tribunal against the order passed by the Commissioner of Income Tax (Appeals), Kolkata-21 [CIT(A)] dated 20.3.2023 by which the CIT(A) affirmed the assessment order dated 16.12.2019

passed under section 147 read with section 143(3) of the Act. A small prelude is required before we embark upon to exercise and examine the correctness of the decision of the learned Tribunal, impugned in this appeal. The assessee filed its return of income for the assessment year under consideration (AY 2012-13) on 6.2.2012 declaring a loss of Rs.74,252/-. The case was selected for scrutiny and an assessment order was passed under section 143(3) of the Act on 20.3.2015 wherein the entire share capital raised by the assessee was added and the total income was assessed at Rs.79,14,03,750/-. To be noted that the assessing officer does not dispute the fact that the assessee provided the relevant document and explained the transaction apart from the identity and the creditworthiness of the share applicant and the genuineness of the transaction. However, it appears that the additions were made on account of non-compliance of the requirement under section 131 of the Act. While so, the Commissioner initiated proceedings under section 263 of the Act by passing order dated 17.10.2016 directing the assessing officer to conduct de novo assessment. Pursuant to which, notice under section 142(1) was issued on 11.11.2016 and the assessee responded to the notice, provided details and documents and the directors of the assessee as well as the share subscribers statement in response to the summons issued under section 131 of the Act. The assessing officer was satisfied with the documents and details provided as well as the statements recorded from the directors of the assessee and the share subscribers and he completed the assessment by an order dated 30.12.2016 and assessed the total income at Rs.1,17,342/-. Once again, the Commissioner initiated proceedings under section 263 of the Act being the second round of revision proceeding and an order was passed on 12.3.2019 setting aside the assessment order dated 30.12.2016. It is seen that the said order passed under section 263 dated 12.3.2019 was an ex parte order. The assessee preferred an appeal before the learned Tribunal in ITA/495/Kol/2022. During the pendency of the said

appeal the assessing officer issued notices under section 148 of the Act based on certain information alleged to have been received from DDIT (Investigation), Unit-4(2), Kolkata through their letter dated 27.2.2019 that the assessee had taken accommodation entry of Rs.2,48,50,000/- from Sandeep Roy, proprietor of M/s. Sarika Trading Company. Notices were issued under section 142(1) of the Act and on 15.11.2019 show cause notices were issued by the assessing officer in course of reassessment proceedings. The assessee filed its return on 1.12.2019 and also filed the copies of the audited financials and the bank statement during the course of reassessment proceedings and also requested for the reasons for reopening and specifically denied that they have not entered into any transaction with Sandeep Roy or his firm. This could be seen from the communications dated 3.11.2019, 3.12.2019 and 6.12.2019 though reasons were not furnished but taking a cue from what was extracted in the show cause notice the assessee filed its objection on 9.12.2019 to the show cause notice and the notice issued under section 142(1) of the Act and specifically denied the alleged transaction with Sandeep Roy or his firm, M/s. Sarika Trading Company and submitted that such allegation was not supported by any document or evidence. While so, an assessment order was passed under section 263 read with section 144 of the Act on 6.12.2019 adding the entire share capital again and the income was assessed at Rs.79,15,95,340/-. After about ten days by an order dated 16.12.2019 reassessment order was passed under section 143(3) read with section 147 of the Act reckoning the income to be Rs.79,15,95,340/- and making an addition of Rs.2,48,50,000/- as is evident from the above proceedings. The objections which were filed by the assessee on 9.12.2019 were not disposed of. The assessee preferred an appeal before the CIT(A), who had called for a remand report and the assessee also filed a rejoinder to the remand report by their rejoinder dated 28.2.2023. The learned Tribunal allowed the assessee's appeal in ITA/495/Kol/2022. By an order

dated 6.3.2023 the appeal which was preferred by the assessee as against the reassessment order was dismissed by CIT(A) by order dated 20.3.2023. This order was put to challenge before the learned Tribunal in ITA/375/Kol/2023 which was allowed by the learned Tribunal by an order dated 10.11.2023, which is impugned in this appeal. As against the order passed by the learned Tribunal in ITA/495/Kol/2022 dated 6.3.2023, the revenue preferred appeal before this Court in ITAT/267/2023 which was dismissed by judgment dated 8.1.2024. The relevant part of the judgment is quoted hereinbelow :

“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 no to 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 reappreciation 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 reappreciation 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. “

The above dates and events will clearly show that the assessee has been exposed to multiple proceedings for the very same assessment. Be that as it may, when we carefully go through the materials placed on record as well as the reasoning given by the learned Tribunal we find that the decision taken by the learned Tribunal was fully justified in the facts and circumstances of the case. We support this conclusion with the following reasons.

As noted above, the order passed pursuant to the second revisional order under section 263 has been quashed by the learned Tribunal which has been upheld by this Court. The reasons to believe for reopening the assessment has been recorded by the assessing officer and on going through it we find that the name of the assessee does not feature in the body of the reasons but the assessee has been shown as a beneficiary in the reasons for reopening in paragraph ‘details of enquiries made’. There is no specific allegation as against the assessee and as to how layering of funds had taken place. This aspect of the matter was considered by the learned Tribunal and found that the assessing officer never disclosed the details of layers through which the alleged money has been reached into bank account of the assessee nor any information was shared in respect of any documentary evidence for the alleged transaction of accommodation entry for which the assessee was stated to be a beneficiary. This finding of the learned Tribunal is well justified. Apart from that we also find that no specific reasons have been mentioned by the assessing officer as to

the nature of the transaction of accommodation entry qua the assessee and this aspect was examined by the learned Tribunal and it was observed that the assessing officer does not disclosed as to whether it is an income or expenses or an allowance or share capital or loan, etc. It is not in dispute that the assessee has produced the books of accounts and the bank statement to demonstrate that there was no transaction with the alleged accommodation entry provider, Mr. Sandeep Roy, proprietor of M/s. Sarika Trading Co. The factual aspect of the matter as regards the share capital and the share premium was examined by the assessing officer in detail and the documents and details furnished by the assessee were accepted while passing the assessment order dated 30.12.2016. The attempt to revise the said order by way of a second revisional order under section 263 proved futile as the assessee was successful before the Tribunal as well as before this Court. Thus, the learned Tribunal on considering the factual position had rightly granted relief to the assessee. At this juncture, it would be of relevance to take note of the decision of this Court in the case of Principal Commissioner of Income Tax-18, Kolkata vs. Prasant Desai, 2025(6) TMI 984-Calcutta High Court, wherein also there was an allegation of layering. In fact the case on hand is much stronger to that of the case of the assessee Prasant Desai in the above decision. The court took note of the factual position and also the decision of the Hon'ble Supreme Court in Income-tax Officer vs. Lakhmani Mewal Das, reported in (1976) 103 ITR 437 (SC) wherein the Hon'ble Supreme Court held that the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts.

Thus, the Tribunal after examining the factual position had rightly granted relief to the assessee by passing the impugned order.

For the above reasons, we find no question of law much less substantial question of law arises for consideration in this appeal. Accordingly, the appeal fails and is dismissed.

Consequently, the application, GA/2/2024 stands disposed of.

(T.S SIVAGNANAM)
CHIEF JUSTICE

I agree.

(CHAITALI CHATTERJEE (DAS), J.)