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

ITAT/251/2024
IA NO: GA/1/2024

PRINCIPAL COMMISSIONER OF INCOME TAX 2 KOLKATA
VS
RANISATI HOSIERY PVT LTD.

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 9th June, 2025.

Mr. Tilak Mitra, Adv.
Mr. soumen Bhattacharjee, Adv.
Mr. Ankan Das, Adv.
Ms. Shradhya Ghosh, Adv.
...for appellant.

Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Avra Mazumder, Adv.
Mr. Suman Bhowmik, Adv.
Ms. Alisha Das, Adv.
Mr. Samrat Das, Adv.
Ms. Elina Dey, Adv.
Mr. Sourendranath Banerjee, Adv.
. ... for respondents.

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 18.03.2024 passed by the Income Tax Appellate Tribunal “C” Bench, Kolkata (the Tribunal) in ITA No. 1278/Kol/2023 for the assessment year 2012-13.

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

“i) Whether the Learned Tribunal has committed substantial error in law by quashing the order passed under Section 263 on 12.03.2019 ignoring the

revisionary power of Principal Commissioner of Income Tax under Section 263 of the Income Tax Act, 1961 where the Commissioner shall have power to consider the order passed by the Assessing Officer as erroneous as the ground that the assessing office should have made further enquires ?

ii) Whether the Learned Tribunal has committed substantial error in law by accepting the submission/contention of the assessee and subscriber companies merely based on paper submission and ignoring the inadequacy and lacuna in the investigation process for revealing the actual nature of the transactions?

iii) Whether the Learned Tribunal has committed substantial error in law by not considering that the order passed on 19.08.2016 by the Assessing Officer under section 143(3) r.w.s. 263 of the Income Tax Act is a product of not making proper enquiry and the decision is erroneous in so far as prejudicial to the interest of the revenue in accordance with the explanation 2.C of section 263 of the Income Tax Act.”

We have heard Mr. Tilak Mitra, learned senior standing Counsel assisted by Mr. Soumen Bhattacharjee for the appellant and Mr. Abhratosh Majumdar, learned Senior Counsel assisted by Mr. Avra Mazumder for the respondent.

The assessment for the year under consideration was completed by the Assessing Officer by order dated 24.03.2015 under Section 143(3) of the Act. The assessee filed an appeal before the Commissioner of Income Tax (Appeals)-4 [CIT(A)] which was dismissed as withdrawn by order dated 20th July, 2016. Thereafter, the Principal Commissioner of Income Tax-4, Kolkata, PCIT exercised his power under Section 263 of the Act. Notice was issued to the assessee for which the assessee submitted their reply and produced certain documents. The PCIT was of the view that the order of assessment passed under Section 143(3) of the Act is erroneous insofar as it is prejudicial to the interest of revenue and, accordingly, the assessment order was set aside and the direction was issued to the Assessing Officer to examine the credit

appearing in the books of the assessee as share capital including premium and nature of transactions to the identity of the investors and its genuineness. Pursuant thereto, the Assessing Officer issued notice under Section 142(1) dated 17.08.2016 and fix the case for hearing. The assessee was represented by their authorized representative in the hearing fixed on 19th August, 2016 and they produced a copy of the income tax return, audited accounts, details of directors, share trading, registered office, details of increase of share capital, Form-2 and Form-5, shareholders list, bank account details. The case was discussed by the Assessing Officer and the document and details which were produced by the assessee were examined and the Assessing Officer completed the assessment under Section 143(3) read with Section 263 of the Act holding that the genuineness, identity, creditworthiness of the share subscribers were verified from the documents which were produced by the assessee and the source of funds were also verified and the authorized representative of the assessee had explained the source of funds. Accordingly, the total income of the assessee was computed as nil.

Once PCIT exercised the power under Section 263 of the Act and notice was issued solely on the ground that the Assessing Officer has passed the second assessment order without carrying out detail investigation/verification/independent enquiry regarding identity, creditworthiness of the shareholders and also the genuineness of the transactions relating to the share capital that was intended to be carried out and merely accepted the submission of the assessee in this regard. The PCIT passed the order dated 12th March, 2019 under Section 263 of the Act. The first observation made by the PCIT is that any order passed subsequent to an order under Section 263 must be in favour of revenue; either earlier assessment income should be enhanced or could be the same as earlier order but with enhanced enquiry so that addition should be strengthened to pass the test of the appellate proceedings. We are to

examine as to the correctness to such findings recorded by the PCIT. Identical finding was rendered by the PCIT in the case of the Principal Commissioner of Income Tax, Central-1 Vs. Rani Sati Agro Tech(P.) Ltd. reported in [2024] 161 taxmann. com 124(Calcutta) and this Court held that such finding rendered by the PCIT was erroneous. Against the said judgment the revenue filed appeal before the Hon'ble Supreme Court which was dismissed as reported in [2025] 173 taxmann.com 919(SC). In the light of the above decision, the findings rendered by the PCIT in the present appeal that any order passed subsequent to order under Section 263 must be in favour of the revenue has to be held to be erroneous. This would be sufficient to set aside the order passed by the PCIT. However, when the matter was carried on appeal by the assessee before the Tribunal the Tribunal not only examined the above aspect but also examine as to under what circumstances the PCIT can exercise power under Section 263 of the Act. After noting the statutory provision, it has been rightly pointed out by the learned Tribunal that before passing an order for modifying, enhancing or cancelling the assessment the PCIT was supposed to either himself make or caused to make an enquiry as deem necessary. In this regard, it is relevant to take note of the words "as he deems necessary" which would indicate that it would be incumbent upon the PCIT to make or cause to make an enquiry. On perusal of the order passed by the PCIT it is seen that the reply submitted by the assessee on the various issues was not taken note of which was statutorily required to be done so as to enable the PCIT to secure the prima facie opinion as to whether the order of the Assessing Officer was erroneous so far as it was prejudicial to the interest of revenue. It is not clear from the order passed by the PCIT as to whether the assessment files were perused since in the assessment order passed under Section 143(3) read with Section 263 of the Act the Assessing Officer records the various documents which were produced by the assessee

and also records that the details of documents were examined and the case was discussed and thereafter the Assessing Officer has recorded that the genuineness, identity and creditworthiness of the share subscribers were verified from the documents produced and the source of funds have also been explained. Therefore, to disallow such finding, the PCIT is required to form a prima facie opinion and merely because the assessment order is not a lengthy order will not be a ground to set aside the assessment order that too for the second time. That apart the PCIT has also not pointed out as to what was the nature and the manner of enquiry which was required to be done and merely proceeded on the basis that there was lack of enquiry on the part of the Assessing Officer.

Thus, considering the facts and circumstances of case the learned Tribunal was right in allowing the assessee's appeal and setting aside the order passed by PCIT under Section 263 of the Act.

For all the above reasons, the appeal fails and the same is dismissed and the substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)