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

ITAT/262/2024  
IA NO: GA/1/2024, GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA  
VS  
M/s. ANJANIPUTRA NIRMAL PVT. LTD.

BEFORE :  
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM  
-A N D-  
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)  
DATE : 2<sup>nd</sup> September, 2025

*Mr. Aryak Dutt, Adv.*  
*Mr. Soumen Bhattacharjee, Adv.*  
*...for appellant*  
*Mr. Soumitra Chowdhury, Adv.*  
*Mr. Pranabesh Sarkar, Adv.*  
*...for respondent*

The Court : This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated 8.12.2023 passed by the Income Tax Appellate Tribunal, 'A' Bench, Kolkata (Tribunal) in ITA No. 318/Kol/2021, for the assessment year 2012-13.

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 has erred in quashing the order u/s. 263 dated

12.03.2019 by misinterpreting the provision of the sec. 263 of the Act and not recognizing the deficiency in the investigation conducted by the AO based on which the revisionary order u/s 263 was rightly passed by the Ld. PCIT ?

- ii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT has erred in quashing the order u/s. 263 dated 12.03.2019 by misinterpreting the provision of the sec. 263 of the Act and not recognizing the deficiency in the investigation conducted by the AO based on which the revisionary order u/s 263 was rightly passed by the Ld. PCIT ?
- iii) Whether on the facts and in the circumstances of the case, the Hon'ble ITAT has erred in accepting the submission/contention of the assessee & subscriber companies merely based on paper submission and ignoring the inadequacy & lacuna in the investigation process for revealing the actual nature of the transactions ?

We have heard Mr. Aryak Dutt, learned standing counsel appearing for the appellant/department and Mr. Soumitra Chowdhury, learned counsel for the respondent/assessee.

There is a delay of 251 days in filing the appeal. As the explanation offered by the appellant/department is satisfactory, delay in filing the appeal is condoned. The application, IA NO: GA/1/2024, is allowed.

The revenue is aggrieved by the order passed by the learned Tribunal dated 8<sup>th</sup> December, 2023 by which the appeal filed by the assessee was allowed and the order passed by the Principal Commissioner of Income Tax, Kolkata-4 (PCIT) under section 263 of the Act, dated 12.3.2019 was set aside.

We have carefully examined the order passed by the learned Tribunal and noted the submissions made on either side.

It is not in dispute that the power under section 263 was invoked by the PCIT for the second time and in the first round PCIT by order dated 9.9.2016 set aside the assessment made under section 143(3), dated 16.3.2015 and assessed the income at Rs.6,21,01,240/-.

The Assessing Officer passed the fresh assessment order under section 143(3) read with section 263 of the Act, dated 21.10.2016 making an addition already made under section 68 of the Act in respect of the share capital/share premium was deleted and income was assessed at Rs.1240/-. The Assessing Officer called for the necessary details from the assessee and also from the shareholders under section 133(6) of the Act which was duly complied with and by a detailed assessment order dated 21.10.2016 the deletion of addition was made. The PCIT was of the opinion that the assessment order dated 21.10.2016 is erroneous and prejudicial to the interest of the revenue and

alleged that the Assessing Officer has passed the order without carrying out detailed investigation/verification/independent enquiry regarding identity, creditworthiness of the shareholders and also genuineness of the share transaction relating to share capital/share premium. Accordingly, notice under section 263 was issued. However, it appears that the assessee did not submit a reply. Finally, the assessment order was set aside and the Assessing Officer was directed to frame the assessment de novo in accordance with the provisions of the Act.

The issue which fell for consideration before the learned Tribunal was whether the power under section 263 was exerciseable by the PCIT to set aside the assessment framed under section 143(3) read with section 263 of the Act and on the same issue on the ground of lack of enquiry into share capital/share premium. Learned Tribunal after carefully examining the facts opined that it is not a case of no enquiry or lack of enquiry as the Assessing Officer has made enquiry and taken a view after considering the evidence furnished by the assessee as well as by the share subscribers. Furthermore, the learned Tribunal on facts found that the twin conditions which are required to be satisfied to invoke the power under section 263 were not complied with.

Accordingly, the learned Tribunal after taking note of the decision of the Hon'ble Supreme Court in *Malabar Industrial Co. vs. CIT*, (2000) 243 ITR 83 (SC) held that if only one of the twin conditions are satisfied, the provisions of section 263 of the Act cannot be invoked. The Court also took into

consideration the decision of this Court in *PCIT vs. Bhagwati Vintrade Pvt. Ltd.*, *ITAT/184/2022* and *PCIT vs. M/s. Intent Dealers Pvt. Ltd.*, *ITAT 92/ 2022* and allowed the assessee's appeal.

Thus, the learned Tribunal on examining the factual position and also noting the legal position has granted relief to the assessee.

We are satisfied to state that no questions of law, much less substantial question of law, arises for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

The stay application, GA/2/2024, also stands dismissed.

(T.S. SIVAGNANAM, C.J. )

(CHAITALI CHATTERJEE (DAS), J.)