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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION
ORIGINAL SIDE

ITAT/275/2024
IA NO:GA/1/2024
PRINCIPAL COMMISSIONER OF INCOME TAX 5 KOLKATA
VS
RAMOTAR CHOUDHARI HUF

BEFORE:

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ
AND
THE HON'BLE JUSTICE UDAY KUMAR
Date : 12TH NOVEMBER, 2025.

Appearance:
Mr. P. Dudheria, Adv., for appellant.
Ms. S. Sahani, Adv., for respondent.

The Court: Learned counsel appearing for the appellant submits that the order passed by the Tribunal on May 9, 2024 is perverse as the order passed under section 263 of the Income Tax Act, dated October 10, 2023, by the learned Commissioner of Income Tax-V, Kolkata, the Commissioner should have considered the same materials which were considered by the Assessing Officer during the re-assessment proceeding.

It is further submitted by him that the learned Tribunal failed to consider that the documents considered in the re-assessment proceedings, based on the same set of information, can be considered by the learned PCIT where the assessment, according to the revisional authority, is perverse and against the interests of the revenue.

The learned Tribunal, after hearing the parties, passed the following order:

“8. At this stage, the learned counsel has placed reliance on the decision of the jurisdictional Calcutta High Court in the case of ‘PCIT vs. Usha Polychem Indias (P) Ltd’ reported in [2023] 149 taxmann.com 240 (Cal), wherein, the Hon’ble Calcutta High Court has held that where Principal Commissioner involved revision jurisdiction under section 263 in case of assessee on basis of an information received from Dy. Director (Investigation) regarding huge amount of unaccounted funds received in bank account of assessee, since a reassessment proceeding was already invoked and completed on the basis of same information, impugned revision was unjustified. The relevant part of the order of the HOn’ble Calcutta High Court is reproduced as under:

“4. The short issue which falls for consideration in the instant case is whether the assumption of jurisdiction by the Principal Commissioner of Income Tax, Kolkata-2(PCIT) under section 263 of the Act was justified. The Tribunal had allowed the assessee’s appeal and held that the PCIT has not recorded any finding that he has reason to believe that income assessable to tax has escaped assessment and the revenue being aggrieved by the said finding on an appeal before us. What is important to note in the instant case is that the assessment for the year under consideration, AY 2012-13 was completed on 30-3-2015. Subsequently, the assessment was reopened based on the information received from the DDIT (Investigation) Unit 2(2), Kolkata dated 6-3-2019. Thereafter, notice under section 148 of the Act was issued on 29-3-2019 and in response to such notice the assessee filed its return of income declaring a total income of Rs.23,440/-. Subsequently, notices were issued under sections 143(2), 142(1) of the Act and the

assessee filed his response along with documents. The Assessing Officer on considering the documents and the return furnished by the assessee accepted the stand taken by the assessee and completed the assessment. It is seen that PCIT has exercised jurisdiction under section 263 of the Act on the very same information furnished by the DDIT (Investigation) Unit 2(2) dated 6-3-2019. On perusal of the order passed by the PCIT dated 15-3-2021 in which the show cause notice issued under section 263 of the Act has been extracted, the PCIT has not recorded any finding that he has reason to believe that income that is assessable to tax has escaped assessment.

5. In the absence of such finding, we are of the view that the Tribunal was right in coming to the conclusion that the PCIT erred in exercising its jurisdiction. Our view is supported by the decision in the case of *Pr. CIT v. Anindita Steels Ltd.* [2022] 1347 *taxmann.com* 203(Cal.).

6. The learned standing counsel for the appellant relied upon the decision of the Hon'ble Supreme Court in *Malabar Industrial Co. Ltd. V. CIT* [2000] 109 *Taxman* 66/243 *ITR* 83 [2000] 2 *Supreme Court Cases* 718 and, in particular two paragraphs 10 and 11 of the said decision.

7. In fact, the said decision would support the case of the respondent assessee and would lead us to affirm such an order.

8. Thus, in the light of the factual aspect brought out by the Tribunal while granting relief to the assessee, we find no substantial questions of law, much less substantial questions of law arising for consideration in this appeal."

9. In view of the discussion made above, the impugned order of the Id. Pr. CIT is not sustainable as per law and the same is set aside.”

The appeal and the stay application accordingly stand dismissed.

(RAJARSHI BHARADWAJ ,J)

(UDAY KUMAR, J.)

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