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

ITAT/292/2024
IA NO: GA/1/2024

PRINCIPAL COMMISSIONER OF INCOME TAX 5
KOLKATA
VS
DEBABRATA BANERJEE

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)
DATE : 18th July, 2025.

Mr. Prithu Dudhoria, Adv. …for appellant.

The Court : - This appeal by the Income Tax department has been filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 18.6.2024 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA/1084/Kol/2023 for the assessment year 2013-14.

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

"1. Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal was justified in law in quashing the order u/s. 147 read with section 144 and 144B of the Income Tax Act, 1961 dated March 25, 2022 solely on technical grounds without going into the merits of the case and deleting the addition of Rs.52,10,74,000/- made by the assessing officer under section 69A read with section 115BBE of the Act?

2. Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal was justified in law in holding that the

> *reopening of assessment has been made in violation of the 1st proviso to Section 147 of the Act without considering the fact that the assessee had failed to fully and truly disclose all material facts necessary for his assessment in view of credible and valid information received by the assessing officer from the DDIT/ADIT (Investigation) after completion of assessment order under section 143(3) revealing that Siliguri/Jalpaiguri Development Authority [SJDA] during their inspection had found that the assessee had not supplied any material against the payments of Rs.52,10,74,000/- for a work order of supplying materials for construction of electric crematorium nor could the assessee satisfactorily prove the purchase or delivery of the goods?"*

We have heard Mr. Prithu Dudhoria, learned standing counsel for the appellant/revenue. None appears for the respondent/assessee.

The assessee was successful before the Tribunal in setting aside the reopening of the assessment under Section 147 read with Section 144 of the Act.

We have carefully perused the order passed by the learned Tribunal and noted the facts in detail. It cannot be disputed by the revenue that the initial assessment was a scrutiny assessment under Section 143(3) of the Act. The assessee, Ajit Kumar Banerjee, had filed the return of the income for the assessment year under consideration on 31.3.2014 and he passed away on 19.12.2019. The return of income was selected for scrutiny and notice under Section 143(2) was issued and thereafter, notice under Section 142(1) was issued and, subsequently, the case was transferred to the DCIT, Circle-34, Kolkata, who proceeded further for making the assessment. The said authority issued show cause notice dated 30.11.2015 calling upon the assessee to show cause on various issues concerning the assessment and the issues which were to be discussed included the issue relating to the sum of Rs.58,25,96,154/- received by the assessee from Siliguri/Jalpaiguri Development Authority. The assessee was called upon to submit the details of such advances. The assessee by letter dated 14.1.2016 filed various details and documents which included the details of advances of Rs.58,25,96,154/- received from Siliguri/Jalpaiguri Development Authority against uncompleted project. The assessee also submitted copies of contracts and other details and evidence in relation to such contract and after considering all the documents filed by the assessee, the assessment was completed and the total income of the assessee was determined at Rs.2,51,16,536/- after making an addition of Rs.84,14,786/-. The assessee challenged the said order by filing an appeal before the Commissioner of Income Tax (Appeals), Kolkata, [CIT(A)] and the appeal was disposed of by the appellate authority who granted substantial relief to the assessee and also directed the Assessing Officer to allow the credit of advance tax of Rs.1,20,00,000/-, which was wrongly deposited on account of wrong PAN number. The CIT(A) also directed the Assessing Officer to allow the credit of TDS of Rs.48,48,836/- which the deducting authority wrongly uploaded in different PAN number.

We find from the reasons recorded by the Assessing Officer for reopening the assessment that it is the very same amount which was paid to the assessee by the Siliguri/Jalpaiguri Development Authority and in the reasons the Assessing Officer has not stated as to the failure on the part of the assessee to fully and truly disclose all material particulars for the purpose of the assessment.

Thus, it is evident that the reason for reopening has been recorded without due application of mind. That apart, the notice issued under Section 148 of the Act was sent to the deceased assessee in the email address of the said assessee and not to his legal heir. This is one more error committed by the Assessing Officer. All these facts were taken into consideration and the appeal filed by the legal representative of the original assessee was allowed.

Thus, we find the matter to be entirely factual and no questions of law, much less substantial questions of law arises for consideration in this appeal.

Accordingly, the appeal fails and the same is dismissed.

Consequently, the application, GA/1/2024 also stands dismissed.

(T.S. SIVAGNANAM, CJ.)

(CHAITALI CHATTERJEE (DAS), J.)

SM/pkd.
AR(CR)