

OD-15

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (INCOME TAX)
ORIGINAL SIDE

ITAT/152/2022
IA No.: GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX-5, KOLKATA
VS.
M/S. BMR COMMERCIAL PVT. LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 31st October, 2022

Appearance :
Mr. Tilak Mitra, Adv.
... for appellant
Mr. Subash Agarwal, Adv.
...for respondent

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the order dated 17th September, 2021, passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata, in I.T.A. No. 463/Kol/2020 for the assessment year 2015-16.

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

- i) Whether on the facts and circumstances of the case and in law the Learned Income Tax Appellate Tribunal was correct in quashing the order under section 263 of the Act dated 22.06.2020 passed by the Principal Commissioner of Income Tax-5, Kolkata due to failure of the Assessing

Officer to completely verify the authenticity of other expenses aggregating Rs.10,11,19,897/- ?

- ii) Whether on the facts and circumstances of the case and in law the Learned Income Tax Appellate Tribunal was correct in holding that the Assessing Officer who passed the order under section 143(3) of the Act dated 28.12.2017 had duly verified the authenticity of other expenses aggregating Rs.10,11,19,897/- even though the assessee had only provided a list of sundry Creditors from which even the aggregate expenditures made by assessee could not be confirmed ?
- iii) Whether on the facts and circumstances of the case and in law the Learned Income Tax Appellate Tribunal was correct in holding that proper verification of other expenses was done by the Assessing Officer before passing the order under section 143(3) of the Act dated 28.12.2017 and thus deciding that the assessing officer's act of getting hold of copies of documents only by issue of notices under section 133(6) of the Act was a sufficient verification exercise while failing to recognize the essentially higher level of verification that could be done by issue of summons under section 131 of the Act upon the concerned parties and getting the scope of examining the original documents, books of accounts etc. as well as that of examining and cross examining the parties in person ?

We have heard Mr. Tilak Mitra, learned standing Counsel appearing for the appellant/revenue and Mr. Subash Agarwal, learned Counsel appearing for the respondent/assessee.

The order impugned before us passed by the learned Tribunal was at the instance of the respondent/assessee who had challenged the order passed by the Principal Commissioner of Income Tax V, Kolkata (PCIT) under section 263 of the Act dated 22.6.2020. The learned Tribunal after going through the assessment file and the documents as well as the order sheet was of the opinion that the Assessing Officer after going through the entire records was satisfied that the assessee had filed necessary details towards the amounts paid by them for transportation charges. Further, the learned Tribunal found that the Assessing Officer had conducted enquiry by issuing notice under section 133(6) of the Act. Furthermore, the learned Tribunal applied the decision of the Hon'ble Supreme Court in the case of *Commissioner of Income Tax (Central), Ludhiana vs. Max India Ltd., (2008) 166 Taxman 188 (SC)* and allowed the appeal filed by the assessee.

We find that the entire matter is factual and the learned Tribunal has re-appraised the factual position and was satisfied that the Assessing Officer did conduct an enquiry before completing the assessment.

Thus, we find that the twin tests which are required to be fulfilled for invoking the power under section 263 of the Act as laid down by the Hon'ble Supreme Court in the case of *Malabar Industrial Co. Ltd. vs. CIT, 243 ITR 83 (SC)* do not stand fulfilled.

Therefore, we find there is no question of law much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal is dismissed.

With the dismissal of the appeal, the stay application being GA/2/2022 also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)