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ITA No. 25 of 2018
GA No. 450 of 2017
IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
ORIGINAL SIDE

M/S.BROLLY DEALCOM LLP

Versus

PRINCIPAL COMMISSIONER OF INCOME TAX, KOL-2

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE

The Hon'ble JUSTICE ABHIJIT GANGOPADHYAY

Date : 7th May, 2018.

Appearance:
Mr. A. Gupta, Adv.
Mr. Siddharth Das, Adv.
Ms. Swapna Das, Adv.

Mr. Siddhartha Bhattahcaryya, Adv.

The Court : The limited question which impresses this Court is whether the arbitral tribunal could have upheld the commissioner's order under Section 263 of the Income Tax Act, 1961 without addressing the appellant's challenge thereto on the ground that the appellant had not been served any notice prior to such order being made and that the appellant was not afforded any opportunity of hearing before the commissioner passed the relevant order.

Several other technical points are raised, which may not be worthy of consideration.

It is not in dispute that the commissioner's order under Section 263 of the Act pertains to an assessment regarding a limited liability company for the assessment year 2008-09. It is also not in dispute that subsequent to such assessment year and prior to the commissioner's order being passed on March 28, 2013, the relevant company was dissolved upon its assets and liabilities being taken over as a going concern by the appellant herein as a limited liability partnership. There can be no doubt that upon the assets and liabilities of a business entity being taken over by another as a going concern, the previous liabilities of the original entity fasten on to the subsequent entity. It can also not be disputed that if a particular assessing officer and a relevant commissioner had jurisdiction over the original entity, such authorities would continue to have jurisdiction to reopen the matter pertaining to previous assessment years when the entity was in existence. The objections raised on such grounds do not appear to be worthy of any further consideration.

However, what is of importance is that even though a previous notice under Section 263 of the Act is not a *sine qua non* for the jurisdiction to be exercised thereunder by the commissioner, the provision mandates an opportunity of hearing to be afforded to the assessee. In the present case, upon the assessee company being dissolved, such opportunity of hearing ought to have been given to the present appellant, particularly, since it appears that the present appellant kept the authorities informed of the company being dissolved upon the appellant limited liability partnership taking over its business, assets and liabilities as a going concern.

It is evident from a letter dated May 6, 2013, issued by the appellant herein to the relevant commissioner that the appellant did not have any prior knowledge of the commissioner reopening the matter or intending to pass any order under Section 263 of the Act. While it appears that the order of the commissioner referred to a notice dated March 18, 2013 and such notice remaining unattended to and a further notice informing the assessee of a fresh hearing on March 18, 2013, it is not clear from the commissioner's order under Section 263 of the Act as to whether the present appellant was served the original notice or made aware of the subsequent date of hearing.

A point was squarely taken before the tribunal in course of the challenge to the commissioner's order passed under Section 263 of the Act that no opportunity was afforded to the appellant prior to the order being passed by the commissioner.

It appears that the tribunal dealt with a bunch of matters and disposed of the same by a lead order. Though the order impugned herein records that the facts in every case were looked into, the order impugned does not expressly address the specific point raised by the appellant herein before the tribunal that the appellant assessee as the successor-in-interest of the original assessee had no notice or knowledge of any hearing fixed by the commissioner prior to the commissioner passing the order under Section 263 of the Act.

It is possible that in the wake of the many matters involving the same issue, this special feature of the matter escaped the attention of the tribunal. However, it was imperative for the appellate tribunal to address the issue since a previous opportunity of hearing is necessary to be afforded to an assessee before an order under Section 263 of the Act can be made by a commissioner.

Accordingly, on the limited aspect as to the violation of the principles of natural justice, the order impugned cannot be sustained in so far as it pertains to company Brolly Dealcom Pvt. Ltd. which has been taken over as a going concern by the appellant herein. In other words, the appellate tribunal has to satisfy itself as to whether the appellant herein as the successor-in-interest of Brolly Dealcom Pvt. Ltd. had notice of the hearing under Section 263 of the Act. If there is sufficient material that the original assessee and the present appellant carried on business at the same premises and notice was served at such premises, it will not do for the appellant to feign ignorance by merely stating that the noticee was erroneously addressed to a defunct entity.

ITA No. 25 of 2018 and GA No.450 of 2017 are disposed of by setting aside the order impugned dated August 10, 2015 in so far as it concerns Brolly Dealcom Pvt. Ltd. for the appellate tribunal to apply its mind to the limited issue indicated hereinabove and pass a fresh reasoned order.

There will be no order as to costs.

(SANJIB BANERJEE, J.)

(ABHIJIT GANGOPADHYAY, J.)

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