

OD-13

ITAT/426/2016  
IA No.GA/1/2017 (Old No.GA/36/2017)

IN THE HIGH COURT AT CALCUTTA  
Special Jurisdiction (Income Tax)  
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME  
TAX, KOLKATA-3, KOLKATA

-Versus-

M/S. WEST BENGAL ESSENTIAL  
COMMODITIES SUPPLY CORPORATION  
LIMITED, KOLKATA

Appearance:  
*Mr. Om Narayan Rai, Adv.*  
*...for the appellant.*

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE BIVAS PATTANAYAK

Date : 21<sup>st</sup> July, 2022.

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 8<sup>th</sup> June, 2016 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA No.909/Kol/2013 for the assessment years 2005-06.

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 learned Income Tax Appellate Tribunal, "B" Bench, Kolkata erred in law in*

*holding that the reassessment proceedings initiated under Section 147 of the Income Tax Act, 1961 to be illegal and consequently cancelled the order passed under Section 147 of the Income tax Act ?*

- ii) Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal, "B" Bench, Kolkata erred in law in holding that this is a case of change of opinion, whereas it appears from the record that the issue on which initial proceedings under Section 147 of Income Tax Act, 1961 has been initiated has neither been examined by the assessing officer at the time of initial assessment under Section 143(3)/147 of Income Tax Act, 1961 nor the details of such expenses has been filed by the assessee since the reason for issuing initial Notice under Section 148 of the Income Tax Act, 1961 was for no filing of return under Section 139 of Income Tax Act, 1961 ?*

We have heard Mr. Om Narayan Rai, learned standing counsel for the appellant/revenue.

The short question which falls for consideration is whether the reopening of the assessment was valid and the tribunal was correct in setting aside the order passed by the Commissioner of Income Tax (Appeals) - VIII, Kolkata (CIT(A) dated 25<sup>th</sup> February, 2013 by which the CIT(A) affirmed the ex parte order of assessment dated 30<sup>th</sup> December, 2011 passed by the assessing

officer under Sections 147, 144 and 143(3) of the Act. Admittedly, the assessment was reopened after a period of four years. If that is so, the power under Section 147 could have been invoked where income chargeable to tax has escaped assessment for such assessment year by reason of failure on the part of the assessee to disclose truly and fully all material facts necessary for the assessment. If in the absence of any such finding by the assessing officer, the reopening of the assessment has to be held not sustainable. The tribunal after considering the facts which were placed before it has recorded a finding that the assessing officer does not spell out that escapement of income was due to the assessee not fully and truly disclosing all material facts necessary for completion of the assessment. However, on perusal of the reasons mentioned by the assessing officer, the tribunal found that there is no specific finding to the effect that there was failure on the part of the assessee to fully and truly disclose all material facts. Furthermore, the tribunal also noted that even during the original proceedings before the assessing officer, at the first instance, increase in freight charges vis-à-vis purchases were very much available before the assessing officer. Further, the learned tribunal took note of the decision in *CIT vs. Kelvinator of India Ltd.* reported in 320 ITR 561 (SC) and applied the said decision to the facts of the case and held that the assessing officer does not refer to any new material that

came into his possession based on which he entertained to believe that income of the assessee chargeable to tax has escaped assessment. Further, the nature of activities done by the assessee was taken note of and that it was a Government of West Bengal company. After examining the facts, the tribunal has concluded that the initiation of reassessment proceeding was merely on the basis of change of opinion. Thus, we find that the factual position having been taken note of by the tribunal, relief was granted to the assessee.

Thus, we are of the view that no question of law much less substantial question of law arises for consideration in this appeal. According, the appeal (ITAT/426/2016) fails and is dismissed.

Consequently, the connected application for stay (GA/1/2017) also stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)