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

ITAT/270/2022
IA NO: GA/1/2022
PRINCIPAL COMMISSIONER OF INCOME TAX ASANSOL
VS.
GUNJA SAMABAY KRISHI UNNAYAN SAMITY LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 13th January, 2023

Appearance :
Mr. Prithu Dudheria, Adv.
..for appellant

The Court : - Heard learned Counsel on behalf of the appellant.

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961, (the Act) is directed against the order dated 28.6.2022 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (the Tribunal) in ITA No.110/Kol/2021 for the assessment year 2016-2017. The revenue has raised 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 has erred in law in quashing the order passed under Section 263 of the Income Tax Act, 1961 without considering the fact that the Hon'ble Supreme Court in the case of M/s. Totagars Co-Operative Ltd. SLN (C.N. 7572 of 2009) had held that interest income from surplus fund invested in the deposits with the bank and government securities would come under income from other sources under Section 56 of the Income Tax Act, 1961 and such interest does not qualify for deduction under Section 80P of the Income Tx Act, 1961 ?

ii) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in quashing the order passed under Section 263 of the Income Tax Act, 1961 based on judgment

of Hon'ble Delhi high Court in the case of ITO Vs.DG Housing Projects Ltd.[2012] 343 ITR 329 (Del) without considering the fact that during proceeding under Section 263 before the PCIT, the assessee could not substantiate that the amount of Rs.39,44,212/- was not interest income from surplus fund invested in the deposits with bank and the said interest income qualifies for deduction under Section 80P of the Income Tax Act, 1961 ?

Though notice has been served on the respondent none appears for respondent. The short question which falls for consideration before learned Tribunal was whether assumption of jurisdiction by the *Principal Commissioner of Income Tax, Asansol* (PCIT) under Section 263 of the Act was justified. On perusal of the order passed by the learned Tribunal we find that on facts the learned Tribunal noted while the assessment proceeding was in progress the assessing officer issued a details questionnaire under Section 142(1) of the Act calling upon the respondent/assessee to furnish justification on claim of deduction under Section 80P of the Act. In response to such notice the assessee submitted a details reply which has been extracted by the learned Tribunal in the impugned order. After considering the reply the assessing officer observed that out of the total income of Rs.32,31,576/- the business income is Rs.26,96,495/- and the balance if Rs.5,35,081/- is on account of short term capital gain and thus restricted the deduction under Section 80P of the act to the amount of Rs.26,96,495/- which relates to the business income. The *PCIT* exercised its jurisdiction under Section 263 of the Act primarily by placing reliance on the decision of the Hon'ble Court in the case of *TOTAGARS CO-OPERATIVE LTD.* CP No. 7572 of 2022 and held interest income from surplus fund invested in the deposits with banks and Government Securities which comes in the category of income from other sources under Section 56 of the Act, which does not qualify for deduction under Section 80P of the Act. The assessee submitted an elaborate reply to the notice issued under Section 263 of the Act, in which they placed reliance o the decision of the High Court of Gujarat in the case of *CIT VS. M/s. JAFRI MOMIN VIKASH COOPERATIVE SOCIETY LTD.* Tax Appeal No. 442 of

2013 dated 15.1.2014 and the decision of the Coordinate Bench of the Bengaluru Bench of the Tribunal in the case of *SRI BASAVRAJ CFO PRIMARY AGRICULTURAL CREDIT COOPERATIVE SOCIETY LTD.* in ITA No. 867/Bang/2017 and the decision of the Co-ordinate Bench of the Ahmedabad Bench of the learned Tribunal in the case of *M/s. JAFRI MOMIN VIKASH COOPERATIVE SOCIETY LTD.* (supra) in ITA No. 1491/Ahd/2012. The learned Tribunal considering the submissions on either side and found that the decision in *TOTAGARS CO-OPERATIVE LTD.*(supra) rendered by the Hon'ble Supreme Court is clearly distinguishable on facts as the respondent society was a primary cooperative agricultural society and also found that the facts in the case of *M/s. JAFRI MOMIN VIKASH COOPERATIVE SOCIETY LTD.* of High Court of Gujarat would squarely apply to the case on hand. Furthermore, the learned Tribunal took note of the decision of the high Court of Karnataka in the case of *GUTTI GEDERARA CO-OPERATIVE SOCIETY LTD.VS. ITO 377 ITR 464 (*Karnataka) and held that when the amount which is deposited in the bank was not an amount due to members and it was not the liability of the society to the members then the interest earned from the deposits in the bank was held to be eligible for deduction under Section 80P (2)(a)(i) of the Act. That apart, the learned Tribunal has also extensively gone into the manner in which the assessing officer completed the assessment by conducting inquiry after issuing a questionnaire on the deduction claimed by the assessee under Section 80P(2)(a)(i) and also taking note of the detailed report filed by the assessee. Furthermore, on facts the Tribunal noted that the documents placed by the assessee before it clearly demonstrates the nature of activity carried on by the assessee resulting in different business income which is covered by the Tribunal of 80P(2)(a)(i). In this regard reliance was placed on High Court of Bombay in the case of *GABRIEL INDIA LTD. 1993 203 ITR 108 (Bom).* Further as to the justification on the part of the PCIT to invoke its power under Section 263 o the Act Tribunal took guidance from the decision of the High Court at Delhi in the case of *ITO Vs.DG HOUSING PROJECTS LTD.* [2012] 343 ITR 329(Del), wherein it was held that in the case wrong opinion for finding on merit, the CIT has to

come to the conclusion himself decided that the order is erroneous by conducting necessary inquiry.

Further, it was pointed out that CIT while exercising jurisdiction under Section 263 of the Act should record a finding that the assessment order is erroneous and prejudicial to the interest of revenue and it is not sufficient to allege that the investigation was inadequate. On facts, the learned Tribunal formed that the PCIT has not carried out any enquiry of his own and merely set aside the assessment and remanded it to the Assessing Officer to pass a fresh assessment order on the issue of claim of deduction under Section 80B(2)(a)(i) of the Act and this being contrary to the decision rendered in the case of DG Housing Projects Limited, allowed the appeal and quashed the order passed under Section 263 of the Act.

Thus, we find that the learned Tribunal had rightly taken note of the legal position and granted relief to the assessee. Hence, we are of the view that there is no error in the order passed by the Tribunal for us to interfere and much less, there is no substantial question of law arising for consideration.

In the result, the appeal fails and is dismissed.

The application being IA No.GA/1/2022 is also dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH/SN/S.Pal.