

Chief Justice's Court

Case :- INCOME TAX APPEAL No. - 78 of 2024

Appellant :- The Pr Commissioner of Income Tax, Aaykar Bhawab, Noida and another

Respondent :- M/S Sampark Management Consultancy LLP

Counsel for Appellant :- Gaurav Mahajan

Counsel for Respondent :- Ashish Bansal, Shalini Goel

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

1. This appeal under Section 260A of the Income Tax Act, 1961 (for short 'Act') is directed against order dated 22.03.2024 passed by the Income Tax Appellate Tribunal, Delhi Bench "G": New Delhi (for short 'the Tribunal'), whereby the appeal filed by the respondent-assessee against order dated 27.03.2022 passed by the Principal Commissioner of Income Tax under Section 263 of the Act pertaining to Assessment Year ('AY') 2017-18 has been allowed.

2. The respondent-assessee is engaged in the business of trading in shares and securities. It filed its return for AY 2017-18 on 18.09.2017 declaring income of Rs.1,83,99,800/-. The case was selected for scrutiny through Computer-assisted Scrutiny Selection (CASS) *inter alia* on the ground of excess claim of exemption of dividend income and large increase in unsecured loans during the year. During course of assessment proceedings, the Assessing Officer ('AO') issued notice under Section 142(1) of the Act from time to time along with detailed questionnaire to examine and verify the issues requiring the assessee to clarify and justify them. The assessee complied with the same and filed necessary details along with documentary evidence.

3. The AO examined the details and supporting documentary

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evidence and *inter alia* came to the conclusion that out of total accrued income of Rs.8,93,38,723/- from dividend from shares and mutual funds, Rs.8,89,01,128/- was received from mutual funds which is not within the purview of Section 115 BBDA and is exempted under Section 10 (35) of the Act and large increase in unsecured loans is attributable to increase in the amount of loans obtained by the firm from its partner and consequently, the AO did not draw any adverse inference against the assessee on issues mentioned in CASS and accepted the returned income and passed the assessment order on 17.12.2019 under Section 143(3) of the Act.

4. The PCIT examined the case records of the assessee. To it the assessment order appeared to be erroneous and prejudicial to the interest of revenue. Therefore, invoking powers under Section 263 of the Act, it issued notice to the assessee to which a reply was filed. The PCIT considered the submissions and set aside the assessment order observing and directing the AO to conduct specific inquiry on the issues indicated and pass appropriate consequential order as per the provisions of the Act after giving due and adequate opportunity of hearing to the assessee.

5. Feeling aggrieved, the assessee approached the Tribunal.

6. The Tribunal after hearing the parties and going through the record, came to the conclusion that the AO has neither assumed facts incorrectly nor there is any incorrect application of law. On the contrary, he had applied his mind and his order was not erroneous and, therefore, there was no question of the order being prejudicial to the interest of revenue and consequently allowed the appeal and quashed the order impugned as noticed hereinbefore.

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7. Learned counsel for the appellant made vehement submissions that the Tribunal was not justified in setting aside the order impugned inasmuch as the PCIT has clearly observed that the assessment order was passed without making inquiries or verification which should have been made and the said situation would be covered by Explanation 2 of Section 263 (1) of the Act and consequently, the order impugned passed by the Tribunal gives rise to substantial questions of law. Submissions have been made that provisions of the Act have not been considered by the Tribunal inasmuch as it was established on record that the requisite inquiries or verification pertaining to the claim made in relation to dividend income were not made by the assessee. Further submissions have been made that certain documents were filed before the PCIT, however, the same were not found available on the assessment record which clearly showed that either the said documents were not filed during assessment proceedings or not taken into cognizance thereof or considered by the AO and, therefore, the order impugned passed by the Tribunal gives rise to substantial questions of law.

8. Learned counsel for the respondent supported the order impugned. Submissions have been made that the assessment has been made under Section 143(3) of the Act after issuing detailed questionnaire to the assessee and after examination and verification of the issues raised requiring respondent to clarify and justify them, which was duly responded to along with the documents and based on which a categorical finding was recorded by the AO and, therefore, the exercise of jurisdiction under Section 263 of the Act on the purported ground that the order was passed without making inquiries or verification, has rightly been set aside by the Tribunal and that the same does not give rise to any

9. We have considered the submissions made by counsel for the parties and have perused the material available on record.

10. The PCIT by its order under Section 263 of the Act, after noticing few facts and case laws referred to the provisions of Explanation 2 to Section 263(1) of the Act and observed that the requisite inquiries and verification which were required to be done by the AO have not been undertaken and based on which he has the jurisdiction under Section 263 of the Act.

11. The Tribunal after thoroughly examining the record noticed that the AO issued six notices under Section 142(1) of the Act dated 13.09.2019, 03.10.2019, 10.10.2019, 17.10.2019, 14.11.2019 and 02.12.2019 along with questionnaire in each notice to which assessee submitted reply dated 10.10.2019, 15.10.2019, 25.10.2019, 08.11.2019, 21.11.2019 and 03.12.2019, running into about 300 pages. Whereafter, the AO discussed each reason assigned for selection of the case for scrutiny separately and recorded his findings based on the documentary evidence produced by the assessee before it.

12. The Tribunal was of the opinion that after undertaking an exhaustive exercise, the AO reached to the conclusion that no adverse inference against the assessee can be drawn with regard to any of the issues examined by him. The Tribunal whereafter itself examined the issues pertaining to the excess claim of exemption of dividend income and that of unsecured loans and came to the conclusion that the entire material was produced before the AO and that it cannot be said that the assessee faulted in producing the record during assessment proceedings and/or the same was not

verified by the AO.

13. Once the Tribunal on thorough scrutiny of the record has come to the conclusion that the reasons recorded by the PCIT based on Explanation 2 to Section 263 pertaining to failure of the AO in making inquiries or verification was without any basis and contrary to the record and has allowed the appeal on finding that the order passed by the PCIT was without jurisdiction, in relation to which learned counsel for the appellants failed to point out any perversity, we do not find that the facts of the present case give rise to any substantial question of law as suggested by counsel for the appellants.

14. For the above discussions, the appeal has no substance. The same is, therefore, dismissed.

Order Date :- 27.11.2024

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(Vikas Budhwar, J) (Arun Bhansali, CJ)