

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

ITAT/195/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 2 KOLKATA
VS
GPT SONS PVT LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : November 08, 2024.

Appearance :
Mr. Soumen Bhattacharjee, Adv.
...for appellant
Mr. Amit Agarwal, Adv.
...for respondents

The Court :- We have heard the learned Advocates for the parties.

The revenue has filed this appeal under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 9th May, 2023 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (the Tribunal) in ITA/491/Kol/2021 for the assessment year 2011-12. The revenue has raised the following substantial questions of law for consideration:-

- a. Whether the learned Tribunal has committed substantial error in law in granting relief to the assessee without considering the fact that neither the assessee nor the amalgamating company informed the AO about the scheme of amalgamation approved by the Hon'ble High Court and therefore defect in not issuing notice in the name of amalgamated company remained a curable defect under section 292B of the Income Tax Act, 1961 ?
- b. Whether the learned Tribunal has committed substantial error in law in granting relief to the assessee without considering the fact that neither the

- assessee nor the amalgamating company applied for deactivation of PAN of the amalgamating company, which was in existence till the issuance of scrutiny notice and therefore defect in not issuing notice in the name of amalgamated company is a curable defect under section 292B of the Income Tax Act, 1961 ?
- c. Whether the learned Tribunal has committed substantial error in granting relief to the assessee without considering the fact that return in response to notice under section 148 was filed in the name of amalgamated company and therefore defect in not issuing notice in the name of amalgamated company is a curable defect under section 292B of the Income Tax Act, 1961?
- d. Whether the learned Tribunal has committed substantial error in law in allowing relief to the assessee without considering the fact that when the Assessing Officer was informed that merger had taken place the order under section 147/143(3) was passed in the name of M/s. GPT Sons (P) Ltd. (Amalgamated company) and therefore the technical defect in not issuing notice in the name of amalgamated company should not be given any weightage and the same should have deemed to have been caused under section 292B of the Income Tax Act, 1961?
- e. Whether the learned Income Tax Appellate Tribunal has substantially erred in law in not considering the spirit of the judgment of the Hon'ble Supreme Court in the case of M/s. Mahagun Realtors (P) Ltd. [443 ITR 194 (SC)] wherein the assessment made in the name of amalgamating company was held to be valid as the fact of amalgamation was suppressed from the AO ?

The short question which falls for consideration in this appeal is whether the reopening of the assessment was valid in law, inasmuch as, the notice was admittedly sent to a non existing entity. Before us the learned standing counsel vehemently contend that the fact that the assessee company was amalgamated with GPT Ventures Pvt. Ltd. was never disclosed to the assessing officer and they came to know only on 2024.

This submission appears not to have been raised any such fact before the learned Tribunal. Nonetheless, we considered the said submission and we found the said submission to be factually incorrect as the assessing officer was aware of the amalgamation even at the time when proceedings were initiated under Section 147 of the Act pursuant to the notice dated 6.12.2018. Apart from that in the reasons to believe which was appended to the notice the assessing officer has specifically referred to the details regarding the amalgamation. Therefore, the submission of the revenue cannot be accepted as it is factually incorrect.

The second aspect contending that the assessee had filed the return in the name of the company prior to its amalgamation. This issue was also considered by the learned Tribunal and after taking note of the decision of this Court in the case of I. K. Agencies (P) Ltd. Vs. Commission of Wealth Tax (2012) 20 taxmann.com 731 (Cal) the contention was rejected since the fact that the real assessee subsequently filed its return with objection that such notice is invalid cannot cure the defect which goes to the root of the jurisdiction to reopen the proceedings. Further it was held that the said provision cannot cure the defect of the nature involved in the case where no notice at all has been issued by the real assessee responsible for payment of its dues. The learned Tribunal also took note of the decision in the case of Alamelu Veerappan Vs. ITO (2018) 95 taxmann.com 155 (Mad) which was rendered by relying upon the

decision of the Hon'ble Supreme Court in CIT VS. Amarchand N. Shroff (1963) 48 ITR 59 (SC).

The learned standing Counsel appearing for the revenue placed reliance on the decision of the Hon'ble Supreme Court in PCIT Vs. Mahagun Realtors Pvt. Ltd. (2022) 443 ITR 194 (SC). In fact this decision was also placed by the learned Advocate by the revenue. The learned Tribunal took note of the facts of the said case and found that in the said case the assessee had suppressed the fact of amalgamation. However, in the instant case as pointed out earlier the fact of amalgamation was well within the knowledge of the assessing officer as early as in the year 2018. So far as filing of return in the name of the assessee company prior to its amalgamation was an event which could not be avoided by the assessee and in any event mere filing of such return cannot be taken to be a ground to cure the inherent defect which goes to the root of the matter.

Therefore, the decision of the Hon'ble Supreme Court in PCIT Vs. Mahagun Realtors Pvt. Ltd. (supra) cannot be of any assistance to the facts and circumstances of the present case.

For the reasons as stated above, the appeal is dismissed.

The substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)