

OD-20

IN THE HIGH COURT AT CALCUTTA  
SPECIAL JURISDICTION [INCOME TAX]  
ORIGINAL SIDE

ITAT/202/2023  
IA NO.GA/1/2023  
PRINCIPAL COMMISSIONER OF INCOME TAX, EXEMPTION, KOLKATA  
-Versus-  
M/S. TATA MEDICAL CENTRE TRUST, KOLKATA

BEFORE:

The Hon'ble T.S. SIVAGNANAM, CHIEF JUSTICE

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 26<sup>th</sup> September, 2023

Appearance :

*Ms. Smita Das De, Adv.*

*..for the appellant*

*Mr. Abhratosh Majumdar, Sr. Adv.*

*Mrs. Akshara Shukla, Adv.*

*...for the respondent*

The Court : This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 18<sup>th</sup> July, 2022 and 5<sup>th</sup> April, 2023, passed by the Income Tax Appellate Tribunal, 'B' Bench, Kolkata, in I.T.A. No. 238/Kol/2021 and M.A. No. 38/Kol/2022, for the assessment year 2016-17.

The revenue has raised the following substantial questions of law for consideration :-

- a) Whether in the facts and in the circumstances of the case the Tribunal was justified in law to quash the order passed under Section 263 of the said Act on the ground of not mentioning any DIN despite the fact that the DIN for the said order was duly generated and communicated to the assessee through intimation letter along with the said order ?
- b) Whether in the facts and in the circumstances of the case the Tribunal was justified in law in not appreciating the fact that the intimation letter enclosing the order passed under Section 263 specifically mentioned that “Order u/s 263 Dt. 31.03.2021 is having Document No. (DIN) ITBA/REV/M/REV5/2020-21/1032079241(1)”, which forms an integral part of the order passed under Section 263 ?
- c) Whether in the facts and in the circumstances of the case the Tribunal was justified in law in not appreciating the fact that the DIN which was duly generated and communicated along with the order passed under Section 263 to the assessee was in compliance of the Circular No. 19/2019 dated 14.08.2019 issued by the CBDT ?
- d) Whether the Tribunal was justified in law to dismiss the miscellaneous application without considering the issue of generation of the DIN Number being a ground for rectification of a mistake apparent from record as per section 254(2) of the said Act ?

We have heard Ms. Smita Das De, learned standing Counsel appearing for the appellant/revenue and Mr. Abhratosh Majumder, learned senior Advocate, assisted by Mrs. Akshara Shukla, learned Advocate, for the respondent/assessee.

The short issue which falls for consideration is whether the DIN was mentioned in the order passed under Section 263 of the Act. The learned Tribunal upon examining the facts held that the order does not incorporate the DIN number and it is in violation of the Circular No. 19 of 2019, dated 14<sup>th</sup> August, 2019. In the said Circular, in paragraph 4 it has been stated that any communication which is not in conformity with Para 2 and Para 3 of the said Circular shall be treated as invalid and shall be deemed to have never been issued. The Tribunal on examination of the facts held that the requirement as mentioned in the Circular namely, quoting of the Document Identification Number, has not been followed and therefore allowed the assessee's appeal.

The learned counsel for the appellant submitted that the intimation letter should be treated as part and parcel of the substantive order. However, in the intimation letter there is nothing mentioned as to why in the substantive order the Document Identification Number was not mentioned as mandated in the Circular.

The revenue filed miscellaneous application seeking for rectification of the said order. Once again the Tribunal has undertaken a factual exercise and in fact, raised a specific query to the revenue to point out how a DIN intimation letter along with the manual order as explained by the Commissioner of Income

Tax (Exemption) in his reply fulfils the categorical requirement mandated by the CBDT Circular, more particularly, in paragraph 2 of the said Circular, that the body of the communication, the order under Section 263 of the Act, must contain the fact and that the communication issued referred to the DIN without justifying as to how the non compliance of the CBDT Circular dated 14<sup>th</sup> August, 2019, which was noted by the Tribunal when it passed the main order. The Tribunal notes that this specific query was unable to be answered by the revenue and therefore the learned Tribunal came to the conclusion that the order passed under Section 263 does not satisfy the requirement mandated by the CBDT Circular.

Thus, we find no substantial question of law arises for consideration in this appeal. Accordingly, the appeal is dismissed.

The stay application IA No.GA/1/2023 is also dismissed.

(T.S. SIVAGNAM)  
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)