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ITAT/161/2018
IA No.GA/2/2018 (Old No.GA/1195/2018)

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

PRINCIPAL COMMISSIONER OF INCOME
TAX-I, KOLKATA

-Versus-

M/S. GKW LTD.

Appearance:
Mr. Debasish Chowdhury, Adv.
...for the appellant.

Mr. J. P. Khaitan, Sr. Adv.
Mr. Somak Basu, Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 13th December, 2021.

The Court : This appeal of revenue filed under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 5th April, 2017 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the 'Tribunal' in short) in ITA No.459/Kol/2012 for the assessment year 1996-97.

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

(i) *Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal, "C" Bench, Kolkata was justified in upholding the view of the CIT*

(Appeals) that provisions of Section 72A of the Income Tax Act, 1961 is procedural in nature and that the amendment brought with effect from 1st April, 2000 is retrospective in nature?

(ii) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal, "C" Bench, Kolkata has erred in law in allowing the claim of the assessee of carry forward losses of the amalgamating company by disregarding that no carry forward losses was passed by the authority as found by the assessing officer?"

We have heard Mr. Debasish Chowdhury, learned counsel for the appellant/revenue and Mr. J. P. Khaitan, learned senior counsel for the respondent/assessee.

The short question in the instant case is whether the assessing officer while completing the assessment under Section 143(3) of the Act vide order dated 31st March, 1999 was right in not allowing the carry forward loss of amalgamating company solely on the ground that the authority which has been constituted under the Section 72A of the Act for issuance of a certificate, had not granted a certificate. On going through the order of assessment dated 31st March, 1999, we find that the entitlement of the respondent/assessee to carry forward the loss has not been disputed by the assessing officer and the only ground on which the assessee has been non-suited is by stating that requisite certificate has not been produced by the assessee. This aspect

was examined for its correctness by the Commissioner of Income Tax (Appeals)-XII, (CIT(A)) in an appeal filed by the assessee. After taking note of the facts, the CIT(A) observed that the specified authority despite filing of application by the assessee had not issued certificate under Section 72A of the Act. In the light of the said factual position the question was whether the assessee was entitled to carry forward all losses of the amalgamating company or not.

The facts were not in dispute. However, it appears that an argument was placed by the assessee before the CIT(A) that the conditions laid down in Section 72A of the Act is procedural in nature and, therefore, after its deletion with effect from 1st April, 2000 such deletion was to take effect retrospectively. In our considered view, such exercise was not necessary in the facts and circumstances of the case because on facts, the assessing officer did not dispute the entitlement of the assessee to carry forward the losses of the amalgamating company. Accordingly, the appeal filed by the assessee was allowed. The revenue filed an appeal before the Tribunal and the Tribunal also noted the factual position and found that the conditions stipulated under Section 72A of the Act has been duly complied with by the assessee and, therefore, entitled to carry forward the losses of the amalgamating company. The tribunal however proceeded to also examine the issue as to whether the deletion of the said provision

with effect from 1st April, 2000 was prospective and retrospective in nature. As mentioned earlier, such an exercise was not required to be done in the instant case as it has not been disputed by the Assessing Officer about the entitlement of the assessee to the said benefit and the only grounds on which the assessee was denied relief is not furnishing a certificate which though upheld by the assessee was not issued by the authority and in the meantime, such procedure was itself got deleted.

Thus, we find that the entire matter is fully factual and no questions of law, much less substantial questions of law arise for consideration in this appeal.

Accordingly, the appeal fails and is accordingly dismissed.

With the dismissal of the appeal, the application being GA 2/2018 (Old No.1195/2018) is also dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)