OD – 18 & 19

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

IA NO: GA/2/2018 (OLD NO: GA/1205/2018)
IN
ITAT/165/2018
PRINCIPAL COMMISSIONER OF INCOME TAX - 5, KOLKATA
VS
M/S. MODERN MALLEABLES LIMITED

IA NO: GA/1/2018 (OLD NO: GA/1204/2018)
IN
ITAT/165/2018
PRINCIPAL COMMISSIONER OF INCOME TAX - 5, KOLKATA
VS
M/S. MODERN MALLEABLES LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date: November 22, 2021.

Appearance :

Ms. Sucharita Biswas, Advocate
... for the appellant

Mr. Mr. Asim Chowdhury, Advocate,
... for the respondent

The Court : Heard Ms. Sucharita Biswas, learned Counsel for the appellant and Mr. Chowdhury, learned Counsel for the respondent/assessee. We are satisfied with the reasons assigned in the affidavit filed in support of the prayer for condonation of delay.

The delay is condoned. The application for condonation of delay stands allowed.

This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) and is directed against the order dated 30th August, 2017 passed by Income Tax Appellate Tribunal "A"Bench, Kolkata in I.T.A. Nos. 908/Kol/2011 and I.T.A. Nos. 1888/Kol/2016 for the assessment years 1996-1997. The revenue has raised the following substantial question of law for consideration :-

a) Whether on the facts and the circumstances of the case, the Learned Tribunal was justified in law in allowing deduction of Rs. 1,00,38,000/- on the ground that even if any addition is required to be made on account of unexplained purchase under Section 69C of the Income Tax Act, 1961, the entire expenditure towards the purchase has to be allowed as a deduction under Section 37(1) of the Income Tax Act, 1961 which would neutralise the addition ?

b) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law or in fact in cancelling the levy of penalty of Rs.4,31,93,780/- ignoring the 3 member bench decision of the Supreme Court in K.P.

Madhusudhana reported in 281 ITR 81 which has held that mistakes in issuing of notice under Section 274 of the Income Tax Act, 1961 cannot vitiate the entire proceedings of levy of Penalty under Section 271(1)(c) of the Income Tax Act, 1961 and the same view was also held by the Hon'ble Calcutta High Court in Shyamal Baran Mondal – Versus – DCIT reported in (2001) 244 CTR 631 which is binding on the Learned Tribunal ?

c) Whether on the facts and in the circumstances of the case, the Learned Tribunal was justified in law or in fact in deleting the entire addition of Rs.1,00,38,000/- under Section 69C of the Income Tax Act, 1961 on account of unexplained purchase, when the source of the purchase of the above amount has neither been explained nor established?

d) Whether the judgment and order passed by the Learned Tribunal is totally perverse for not considering the real issue involved in this case ?

We have heard Ms. Sucharita Biswas, learned counsel for the appellant and Mr. Chowdhury, learned Counsel for the respondent/assessee. The respondent/assessee has availed the benefit of *Vivad Se Vishwas Scheme* and the appellant/department has issued Form V declared on 1.11.2021. In the light of the same nothing is left for adjudication in this appeal and the appeal stands disposed of in the light of the settlement arrived at. Consequently, substantial questions of law are left open.

Stay application also stands disposed of.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

GH/RS.