OD – 3 & 4

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

IA NO:GA/1/2017 (OLD NO. GA/1842/2017)
IN
ITAT/215/2017
PRINCIPAL COMMISSIONER OF INCOME TAX - 4, KOLKATA
VS.
SRI SANDIP GOSWAMI

IA NO:GA/2/2017 (OLD NO. GA/1843/2017)
IN
ITAT/215/2017
PRINCIPAL COMMISSIONER OF INCOME TAX - 4, KOLKATA
VS.
SRI SANDIP GOSWAMI

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date: November 23, 2021.

[Via video conference]

Appearance :
Mr. Radha Mohan Roy, Adv.
… for the appellant

RE: IA NO:GA/1/2017 (OLD NO. GA/1842/2017) in ITAT/215/2017

The Court : This application has been filed to condone the delay in preferring the appeal.

We have heard Mr. Radha Mohan Roy, learned standing counsel appearing for the appellant/Revenue. There is a delay of 21 days in filing the appeal. Learned standing counsel for the appellant submitted on instruction from the Ministry of Law that the appeal is hit by the Circular issued by the CBDT and cannot be pursued by the Revenue on account of low tax effect. Therefore, we dispense with the issuance of the notice to the respondent and condone the delay so that the main appeal can be disposed of. Accordingly, the petition is allowed. The delay in filing the appeal is condoned.

RE: IA NO:GA/2/2017 (OLD NO. GA/1843/2017) in ITAT/215/2017

This appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (the Act, in brevity) is directed against the order dated 18.11.2016 passed by the Income Tax Appellate Tribunal, Kolkata "C" Bench, Kolkata in ITA No.71/KOL/2014 for the Assessment Year 2009-10. The Revenue has raised the following substantial question of law for consideration:

(a) Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, "C" Bench, was justified in expanding the scope of Section 54F thereby allowing the respondent/assessee exemption in capital gain for a property purchased outside India i.e. in Canada to come under the purview of Section 54F when it is unambiguous and clear under Section 54F of the

> Income Tax Act, 1961 that if the capital gain arises from transfer of any long term capital assets, the assessee has purchased or is within a period of 3 years after that date constructed, one residential house in India, the asseessee shall get benefit of Section 54F of the Income Tax Act, 1961?

We have heard Mr. Radha Mohan Roy, learned standing counsel appearing for the appellant/Revenue. Learned standing counsel on instruction from the Ministry of Law submitted that the appeal is hit on account of low tax and the Revenue cannot pursue the matter. Accordingly, the appeal stands disposed of on the ground of low tax effect and the substantial question of law is left open.

The stay application is also disposed of.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

RS/bp