OD-11 & 12

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

IA No.GA/2/2017 (Old No.GA/2528/2017)
ITAT/275/2017

PRINCIPAL COMMISSIONER OF INCOME
TAX KOLKATA -10, KOLKATA
-Versus-
SHRI SUJIT KUMAR BHAGAT

IA No.GA/1/2017 (Old No.GA/2527/2017)
ITAT/275/2017

PRINCIPAL COMMISSIONER OF INCOME
TAX KOLKATA-10, KOLKATA
-Versus-
SHRI SUJIT KUMAR BHAGAT

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 25th November, 2021.

Appearance:
Mr. Soumen Bhattacharyya, Adv.
...for the appellant.

The Court : We have heard Mr. Soumen Bhattacharyya, learned Counsel appearing for the appellant/Revenue.

There is a delay of 238 days in filing the appeal. It is reported by the learned counsel for the appellant that the appeal is hit by the circular issued by CBDT and it is a low tax effect case. Therefore, we exercise discretion and condone the delay.

Accordingly, the petition [IA No.GA/1/2017(Old No.GA/2527/2017] is allowed. The delay in filing the appeal is condoned.

This appeal filed by the revenue under Section 260A of the Income Tax Act (the 'Act' in brevity) is directed against the order dated 29th June, 2016 passed by the Income Tax Appellate Tribunal, A-Bench, Kolkata (the 'Tribunal') in ITA No.483/Kol/2013 for the assessment year 2006-07.

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

"a) Whether in the facts and circumstances of the instant case the Learned Tribunal erred in law in holding that the show cause notice issued under section 274 of the Income Tax Act by the Assessing Officer is bad in law and as a consequence thereof the penalty proceedings initiated under section 271(1)(c) of the Act is also bad and liable to be set aside?

b) Whether in the facts and circumstances of the instant case the Learned Tribunal erred in law in allowing the appeal filed by the assessee holding that there was no satisfaction of the Assessing Officer as to whether the penalty was in respect of concealment of income or for furnishing in accurate particulars of income though the assessee in his own grounds of appeal before the Commissioner of Income Tax(Appeal) particularly ground nos.3 and 4 has referred repeatedly to concealed income?

c) Whether in the facts and circumstances of the instant case the Learned Tribunal erred in law in setting aside the order of imposition of penalty passed by the Assessing *officer under Section 271(1)(c) of the Income Tax Act relying upon the decision of the Karnataka High Court in the case of CIT & Anr. vs Manjunatha Cotton and Ginning Factory reported in 359 ITR 565 which does not apply in the facts of the instant case?"*

Learned counsel for the appellant, on instruction, submitted that the above appeal is hit by the circular issued by CBDT and hence, revenue cannot pursue the appeal on account of low tax effect.

Recording the said submission, the appeal, ITAT/275/2017, stands dismissed. The substantial questions of law are left open.

The connected stay application, IA No.GA/2/2017(Old No.GA/2528/2017) is also dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s