

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

ITA/1/2019
PRINCIPAL COMMISSIONER OF INCOME TAX – 1 KOLKATA
VS.
M/s. KILBURN ENGINEERING LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : SEPTEMBER 13, 2022.

Appearance:
Ms. Smita Das De, Adv.
... for appellant
Ms. Manju Agarwal, Adv.
...for 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 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata (Tribunal) dated 11th March, 2018 in I.T.A. No. 1987/Kol/2013 for the assessment year 2009-10.

The appeal was admitted on the following substantial questions of law:-

- i) Whether the Income Tax Appellate Tribunal erred in law in overlooking the terms and conditions as provided in Section 139(5) of the Income Tax Act, 1961 ?
- ii) Whether the illegal validation of the deposit made beyond the period legalized or validated as omission, thereby, the assessee getting the

exemption under section 54G of the Income Tax Act, 1961, was patently wrong and liable to be set aside ?

- iii) Whether the Income Tax Appellate Tribunal erred in law in allowing deduction of Rs.10 crores under section 54G of the Income Tax Act, 1961 completely ignoring the cumulative conditions laid down in section 54G of the Income Tax Act, 1961 ?

We have heard Ms. Smita Das De, learned standing Counsel for the appellant/revenue and Ms. Manju Agarwal, learned Advocate appearing for the respondent.

The short questions which falls for consideration in the instant case with regard to eligibility to exemption on deposit of unutilized capital gain of Rs.10,00,00,000/- that was deposited in a specified account as laid down in Section 54G(2) of the Act on 30th March, 2010 by the assessee. The learned Tribunal affirmed the view taken by the *Commissioner of Income tax (Appeals)* and dismissed the appeal filed by the revenue. On perusal of the order passed by the learned Tribunal we are of the considered view that learned Tribunal rightly appreciated the legal position, took note of the decision in the matter of *PUNJAB & HARYANA HIGH COURT in CIT VS. JAGRITI AGARWAL, 2003 TAXMANN.203 (P&H)* and the decision of High Court of Kerala in *CIT Vs. J. PALIMAR KRISHNA, [2011] 244 CTR 618 (Ker)*. Apart from following the said decision, more importantly the Tribunal took into consideration the factual position in the case on hand and pointed out that period of six months for making deposit under Section 54AC of the Act should be reckoned from the date of actual receipt of the consideration because if the assessee receives part payment as on the date of transfer and receives part payment after six months then it would be lead to an impossible situation by asking the assessee to invest the money in a specified asset before actual receipt of the same. Thus on facts

the learned Tribunal has taken into consideration and rejected the appeal filed by the revenue. Thus we find that there was no error in the order passed by the learned Tribunal. Accordingly, the appeal is dismissed and the substantial questions of law are answered against the revenue.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)