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

ITAT/13/2021
IA No.GA/1/2021
GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL –2, KOLKATA
Vs
M/S. RAUNAK INFRASTRUCTURE LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : 5th September, 2022

Appearance :
Mr. Smarajit Roy Chowdhury,Adv.
...for the appellant.

Mr. Subhas Agarwal,Adv.
Mr. Brijesh Kumar Singh,Adv.
...for the respondent.

Re: GA 1/2021

The Court: We have heard Mr. Smarajit Roy Chowdhury, learned standing counsel appearing for the appellant/revenue and Mr. Subhas Agarwal, learned advocate assisted by Mr. Brijesh Kumar Singh, learned advocate for the respondent/assessee.

There is a delay of 342 days in filing the appeal. We have perused the affidavit filed in support of the petition and we find that sufficient cause has been shown for not having preferred the appeal within the period of limitation. Accordingly, the application is allowed and the delay in filing the appeal is condoned.

Re: ITAT 13 of 2021

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 20th September, 2019 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata in I.T.(SS)A No.

07/Kol/2018 relating to assessment year 2010-11. The revenue has raised the following substantial questions of law:

A) Whether the Income Tax Appellate Tribunal has erred under law in determining the six year which was required to be covered under proceeding u/s 153C of the Income Tax Act, 1961?

B) Whether the decision of Income Tax Appellate Tribunal is erred under law as the jurisdiction of the searched group (DOS 06.03.2014) and the seized materials were with the Assessing Officer and the assessee's jurisdiction has been transferred in to the Assessing Officer's jurisdiction vide order u/s 127 of the Income Tax Act on 02.08.2016?

We have heard Mr. Smarajit Roy Chowdhury, learned standing counsel appearing for the appellant/revenue and Mr. Subhas Agarwal, learned advocate assisted by Mr. Brijesh Kumar Singh, learned advocate for the respondent/assessee.

The short issue which falls for consideration is whether the Assessing Officer was justified in invoking his power under Section 153C(1) of the Act. Learned Tribunal has noted that the Assessing Officer received the materials from the Assessing Officer of the searched person on 2nd August, 2016. By taking into consideration the said date, the learned Tribunal held that the assessments for the years 2009-10 and 2010-11 could not have been subjected to assessment proceedings under Section 153C(1) of the Act with regard to as to how this year period should be calculated. Learned Tribunal rightly took note of the decision in the case of *SSP Aviation Ltd.-vs- Deputy Commissioner of Income Tax reported in [2012] 20 taxmann.com 214 (Delhi)*, wherein it was held as follows:

"14. … … For instance, in the present case, with reference to the Puri Group of Companies, such date will be 5.1.2009. However, in the case of the other person, which in the present case is the petitioner herein, such date will be the date of receiving the books of account or documents or assets seized or requisition by the Assessing Officer having jurisdiction over such other person. In the case of the other person, the question of pendency and abatement of the proceedings of

assessment or reassessment to the six assessment years will be examined with reference to such date."

The above decision was referred to in the case of *Commissioner of Income-tax –7 versus RRJ Securities Ltd. reported in [2015] 62 taxmann.com 391 (Delhi)/380 ITR 612.* In the said decision the Court also took note of the decision in *Pepsi Foods (P.) Ltd vs. Asstt. CIT reported in [2014] 367 ITR 112/52 taxmann.com 220/[2015] 231 Taxman 58 (Delhi)* and in the case of *CIT versus Gopi Apartments reported in [2014] 365 ITR 411/46 taxmann.com 280.*

The jurisdictional issue has been decided by the Tribunal taking note of the admitted factual position that the assessee's Assessing Officer received the materials from the Assessing Officer of searched person only on 2nd August, 2016. If that be the case, the assessment for the year 2010-11 could not have been subjected to proceedings under Section 153C(1) of the Act.

Thus, we find that there is no substantial question of law arising for consideration in the instant case.

Accordingly, the appeal fails and is hereby dismissed.

The stay application being GA 2 of 2021 is also closed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

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