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

ITAT/21/2021
IA No: GA/1/2021, GA/2/2021

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL 1, KOLKATA
VS.
SHRI SANJAY DHINGRA

ITAT/20/2021
IA No: GA/2/2021

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL 1, KOLKATA
VS.
SIDHANT GUPTA

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM

And

THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 22nd November, 2022

Appearance :

Mr. Tilak Mitra, Adv.

Mr. Soumen Bhattacharjee, Adv.

...for the appellant in ITAT 21 of 2021.

Mr. Prithu Dudhuria, Adv.

...for the appellant in ITAT 20 of 2021.

Mr. Avra Mazumder, Adv.

Mr. Binayak Gupta, Adv.

...for the respondents.

The Court : There is a delay of 502 days in filing the appeal being ITAT/21/2021. We are satisfied with the reasons given in the affidavit filed in

support of the condone delay petition. Accordingly, the delay in filing the appeal is condoned and the application for condonation of delay is allowed.

These appeals have been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) challenging the orders dated 24th April, 2019 passed by the Income Tax Appellate Tribunal, 'B' Bench, Kolkata (Tribunal) in ITA No.232/Kol/2017 and C.O. No. 37/Kol/2017 and ITA No.234/Kol/2017 and C.O. No.27/Kol/2017 respectively, both for the assessment year 2013-14.

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

- “(i) Whether on the facts and circumstances of the case and under law, the ITAT has erred in dismissing the revenue’s appeal when all the conditions specified in Section 271AAB(1)(c) of the Income Tax Act, 1961 were satisfied for imposing the penalty ?
- (ii) Whether on the facts and circumstances of the case and under law, the ITAT has erred in holding that penalty u/s. 271AAB of the Income Tax Act, 1961 is not mandatory and is discretionary without considering the provision of section 273B of the Income Tax Act, 1961 which specifically mentions the penal sections under which penalty may not be imposed on a person or an assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure, but excludes the penal section 271AAB of the Income Tax Act, 1961 from its purview ?”

We have heard Mr. Prithu Dudhuria and Mr. Tilak Mitra, learned standing counsel appearing for the appellant/revenue and Mr. Avra Mazumder, learned counsel assisted by Mr. Binayak Gupta, learned Advocate for the respondent/assessee.

On perusal of the order passed by the learned Tribunal, we find that the learned Tribunal had followed the decision of the coordinate Bench of the Tribunal in the case of DCIT vs. A.K. Logistics Pvt. Ltd. in ITA No.1604/Kol/2017, No. 1607/Kol/2017 and No. 1610/Kol/2017, dated 27th February, 2019. When these appeals came up for hearing before us on 7th March, 2021, we directed the learned standing counsel for the department to verify as to whether the department has accepted the decision in AKA Logistics Pvt. Ltd. or whether any appeal has been filed. Today it is reported by the standing counsel that appeal could not be preferred in the said case on account of the low tax effect.

In such factual situation, we are required to examine the matter on merits and render finding as to whether the Tribunal was right in dismissing the revenue's appeal. On going through the order passed by the learned Tribunal, we find no finding has been recorded by the learned Tribunal as to how the decision in AKA Logistics Pvt. Ltd. (supra) would apply to the case on hand and there is no discussion on the factual aspect. That apart, the learned Tribunal has also not given any finding as to how the decision relied on by the revenue in the case of Sandeep Chandak vs. PCIT, Kanpur, (2018) 93 taxmann.com 406 (SC) is not applicable to the case on hand or it is factually distinguishable.

It is the submission of the learned counsel for the respondent/assessee that in the case of AKA Logistics, the Court had taken note of the decision in the case of Sandeep Chandak.

Though such may be the factual position, in the absence of any independent reasoning by the learned Tribunal with regard to the merits of the matter of the respondent/assessee, it will not be possible for us to test the correctness of the order passed by the learned Tribunal, more particularly, when we are to ascertain as to whether any substantial question of law arises for consideration.

Thus, for such reason alone we are inclined to interfere with the order passed by the learned Tribunal and remand the matter to the Tribunal for a fresh decision on merits.

In the result, the appeals are allowed and the order passed by the learned Tribunal is set aside and the matters stand remanded to the Tribunal to render a decision after considering the merits of the matter and also the judgments that may be relied upon by the parties to the litigation.

Consequently, the substantial questions of law are left open.

The applications for stay stand closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)