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

ITAT/23/2021
IA No; GA/1/2021; GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX (CENTRAL) – 1, Kolkata
VS.
VIJAY KUMAR AGARWAL

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 27th June, 2022.

Appearance:
Mr. Prithu Dudheria, Adv.
..for appellant

Re :*GA/1/2021*

The Court : We have heard learned standing Counsel for the appellant/revenue.

There is a delay of 625 days in filing the appeal. We are not fully satisfied with the reasons given therein. Since we are inclined to take up the appeal for consideration, we exercise discretion and condone the delay in filing the appeal.

Accordingly the delay in filing the appeal is condoned.

In view of the above, GA/1/2021 stands disposed of.

ITAT/23/2021

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 30th November, 2018 passed by the Income Tax Appellate Tribunal "D" Bench Kolkata (Tribunal) in ITA/1539/Kol/2017 for the assessment year 2013-14.

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

a) Whether on the facts and circumstances of the case and in law, the Ld. ITAT was erred I law both by holding that penalty initiated by the AO U/s. 271AAB of the Act against the deceased person is not sustainable, without judging the case on merits and appreciating the fact that the legal heir did not inform the AO about the death of the assessee all through assessment and penalty proceedings and even penalty notice was duly received on behalf of the deceased assessee along with assessment order without objecting the same and the A/R representing the assessee duly co-operated with the penalty proceedings before the AO ?

b) Whether on the facts and circumstances of the case and in law, the Ld. I.T.A.T. erred I law to appreciate the difference between wrong penalty notice serve don dead person in the case of Madras High Court Alamelu Veerappan whereas, in the instant case service of penalty notice was not contested by the legal heir at all ?

We have heard Mr. Prithu Dudheria, learned standing Counsel for the appellant. On perusal of the order passed by the Tribunal we find that Tribunal had affirmed the order passed by the Commissioner of Income Tax (Appeals) restricting the penalty imposed by the assessing officer under Section 271AAB only in respect of the undisclosed income of Rs.17,58,272/-. The Tribunal has extracted the findings rendered by the Commissioner (Appeals) from which we find that the entire facts have been analysed and, thereafter, partial relief was granted to the assessee. Before the Tribunal, on behalf of the appellant/assessee it was contended that in the penalty proceedings notice was issued against the dead person and, therefore, initiation of penalty proceeding itself is not sustained. The Tribunal noted the facts and agreed with the assessee. The Tribunal also took into consideration the decision of the High Court of Madras in the case of *ALAMELU VEERAPPAN -vs- ITO ;(2018) 95 taxmann.com 155 (Madras).*

We find that CIT(A) as well as the Tribunal has analysed the facts and then rendered the decision. Therefore, we find there is no question of law much less substantial questions of law arising for consideration in this appeal.

The appeal fails and dismissed.

Accordingly, the stay application being GA/2/2021 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.