OD-5 & 6

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

IA No.GA/1/2021
In
ITAT 25 of 2021

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-1, KOLKATA
Vs
M/S. SHYAM SUNDAR CO. JEWELLERS PVT. LTD.

AND

IA No.GA/2/2021
In
ITAT 25 of 2021

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-1, KOLKATA
Vs
M/S. SHYAM SUNDAR CO. JEWELLERS PVT. LTD.

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 31st January, 2022.

Appearance:
Mr. S.N. Dutta, Adv.
Mr. Asok Bhaumick, Adv.
…for the appellant.

Mr. Avra Mazumder, Adv.
…for the respondent.

Re.: IA No.GA/1/2021

The Court : We have heard Mr. S.N. Dutta, learned senior standing counsel assisted by Mr. Asok Bhaumick, learned counsel appearing for the appellant/revenue and Mr. Avra Mazumder, learned counsel appearing for the respondent/assessee.

There is a delay of 490 days in filing the instant appeal. We are satisfied with the reasons given in the affidavit filed in support of the petition.

Accordingly, the delay in filing the appeal is condoned. The application being IA No.GA/1/2021 for condonation of delay is allowed.

Re.: ITAT 25 of 2021

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act, in brevity) is directed against the order dated 26.04.2019 passed by the Income Tax Appellate Tribunal, 'B' Bench, Kolkata (the Tribunal) in ITA Nos.341 & 342/Kol/2019 for the assessment years 2013-14 and 2014-15. The revenue has raised the following the substantial questions of law for consideration:

A) Whether the Income Tax Appellate Tribunal erred in law by ignoring the facts that CBDT vide notification dated 15.09.2016 withdrew the recognition given to M/s. School of Human Genetics and Population Health, Kolkata to grant approval u/s 35(1)(ii) of the Income Tax Act, 1961 as such the alleged donation is a fake one as the Donee has no authority to receive donation?

B) Whether the Income Tax Appellate Tribunal erred was justified in deleting the disallowance made by the Assessing Officer in respect of the claim of assessee regarding deduction u/s 35(1)(ii) of the Income Tax Act, 1961 as the Donee has admitted during assessment proceeding that the Donated amount has been returned back to the donor deducting only 7 to 8% of the donated amount?

C) Whether the Income Tax Appellate Tribunal has erred in law in ignoring facts that bogus donations are being taken and same were routed back to the donor in the form of cheque after deducting 7 to

8% of the donated amount which was admitted by the bogus donee as evident from the order of the Income Tax Settlement Commission?

D) Whether the order passed by the Income Tax Appellate Tribunal is perverse as it held that there was no evidence that money was returned back to the Donor ignoring the fact on record that recipient of donation itself had made such admission in the statement on oath before the Income Tax Settlement Commission?

We have heard Mr. S.N. Dutta, learned senior standing counsel assisted by Mr. Asok Bhaumick, learned counsel appearing for the appellant/revenue and Mr. Avra Mazumder, learned counsel appearing for the respondent/assessee.

It is submitted by learned counsel for the respondent/assessee that the assessee has availed the benefit of the Vivad Se Vishwas scheme (in short, V.S.V. scheme) and the Form No.3 has been issued on 06.03.2021.

In the light of the said development, there would be no necessity for us to decide the substantial questions of law suggested in this appeal by the revenue. Accordingly, the appeal stands disposed of on the ground that the respondent/assessee has availed the benefit of the V.S.V. scheme.

Accordingly, the appeal being ITAT 25 of 2021 is disposed of and the substantial questions of law are left open.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.pal/pkd