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

ITAT/13/2018
IA NO: GA/1/2018 (OLD NO. GA/200/2018)
GA/2/2018 (OLD NO. GA/201/2018)
PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL – 1, KOLKATA
VS.
M/s. BASIL INTERNATIONAL LTD.

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

Appearance:
Mr. Soumen Bhattacharjee, Adv.
... for appellant

GA/1/2018(GA/200/2018)

The Court : We have heard Mr. Soumen Bhattacharjee, learned standing counsel appearing for the appellant.

There is a delay of 523 days in filing this appeal. Though notice has not been served on the respondent assessee, the learned standing Counsel has reported that the case will not be pursued by the department on account of the low tax effect, we exercise discretion and condone the delay in filing the appeal.

Accordingly, the application is allowed.

ITAT/13/2018

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act for brevity) is directed against the common order dated 24th Februar7y, 2016 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata (the Tribunal) in ITA Nos. 1843,1844,1845 & 1846/Kol/2019 for the assessment years 2004-05 to 2007-08. The revenue has raised the following substantial questions of law for consideration :

i) Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in law in deleting the penalty imposed on the unearthed income of assessee by the Assessing Officer under section 27(1)(c) of the Income Tax Act which was affirmed by the CIT(A) in respect of the Assessment Years 2004-05 to 2007-08?

ii) Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in law in deleting the penalty imposed by the Assessing Officer without considering that the disclosure was made by the assessee only after the search and seizure was made by the DDIT(Inv.), Kolkata in pursuance of which the Assessing officer issued notice under section 153A of the Act and as such the same cannot be said to be voluntary disclosure of expenses incurred during the block assessment year period 2004-05 to 2007-08 ?

iii) Whether on the facts and in the circumstances of the case, the Learned Tribunal erred in relying upon the decision of the jurisdictional Tribunal in the case of Suvaprasanna Bhattacharya versus ACIT in ITA No. 1303/kol/2010 and the decision of the Hon'ble Gujrat Court in the case of Kirit Dayabhai Patel Vs. ACIT in ITA no. 1181, 1182 & 1185 of 2010 which does not apply in the facts and circumstances of the instant case ?

We have heard Mr. Soumen Bhattacharjee, learned standing Counsel for the appellant/revenue. It is submitted by the learned standing Counsel that this appeal has not been pursued by the revenue on account of low tax effect for all the four assessment years. This could be ascertained from the order passed by the Commissioner of Income Tax (Appeals), Central – III, Kolkata dated 9th February, 2009.

For the above reason, the appeal stands disposed of on the low tax effect and the substantial question of law are left open.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

Pkd/GH