IN THE HIGH COURT OF JUDICATURE AT CALCUTTA

SPECIAL JURISDICTION [INCOME TAX]

ORIGINAL SIDE

HEARD ON : 04.03.2022
DELIVERED ON : 04.03.2022

CORAM

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

AND

THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA

IA NO:GA/1/2020
In
ITAT/21/2020

COMMISSIONER OF INCOME TAX, I.T.I.T. AND T P KOLKATA
VS.
YACHIO ENGINEERING CO. LTD.
....

IA NO:GA/2/2020
In
ITAT/21/2020

COMMISSIONER OF INCOME TAX, I.T.I.T. AND T P KOLKATA
VS.
YACHIO ENGINEERING CO. LTD.
....

Appearance :-
Mr. Tilak Mitra, Adv.
Mr. Madhu Jana, Adv.

...For the Appellant

None appears

...For the Respondent

JUDGMENT

(Judgment of the Court was delivered by T.S. SIVAGNANAM, J.)

RE: IA NO:GA/1/2020

1. We have heard Mr. Tilak Mitra, learned senior standing counsel along with Mr. Madhu Jana, learned junior standing counsel for the appellant/revenue.

2. There is a delay of 154 days in filing this appeal. Notice sent to the respondent/assessee has returned with the postal endorsement "insufficient address". Since the learned counsel for the appellant expressed desire to argue the appeal on merits, we exercise discretion and condone the delay in filing the appeal. Accordingly, the application, IA No:GA/1/2020 stands disposed of.

RE: ITAT/21/2020

3. 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 01.05.2019 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (Tribunal) in ITA No.337[Kol]/2018 for the assessment year 2001-02. The revenue has raised the following substantial questions of law for our consideration.

a. Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal erred in not appreciating the facts that the cause for initiation of penalty against the assessee was mentioned in the body of the assessment order ?

b. Whether the Learned Income Tax Appellate Tribunal erred in law in summarily concluding that the notice of penalty suffered from defect without appreciating that both the assessment order and the penalty order clearly brought out the fault of the assessee and explicit reasons make assessment liable for penalty under section 271(1)(c) of the Income Tax Act, 1961 ?

4. We have heard Mr. Tilak Mitra, learned senior standing counsel along with Mr. Madhu Jana, learned junior standing counsel for the appellant/revenue.

5. The order of penalty imposed under Section 271(1)(c) of the Act was put to challenge before the Commissioner of Income Tax (Appeals)-22, Kolkata, (CIT(A)). The appeal was dismissed by an order dated 29.12.2017. Aggrieved by the same, the assessee filed appeal before the Tribunal, which has been allowed by the impugned order. Upon reading the order passed by the Tribunal, we find that the Tribunal was fully satisfied that the notice issued by the assessing officer before levying penalty under section 271(1)(c) was defective and, therefore, applying the decision in the case of *CIT vs. Manjunatha Cotton and Ginning Factory, (2013) 359 ITR 565* as also the decision of this Court in the case of *Pr. CIT-19 vs. Dr. Murari Mohan Koley, ITAT No.306 of 2017* dated 18.07.2018 allowed the appeal. From the grounds raised before us by the revenue, we find that the revenue has

not been able to substantiate that there is no defect in the show cause notice issued before levying penalty under Section 271(1)(c) of the Act. The Courts have consistently held that a defect in the show cause notice goes to the root of the matter and such a ground can be raised by the assessee at any point of time as the same being question of law. The Tribunal, on facts, found that the notice was defective. Therefore, it applied the law laid down in the case of *CIT vs. Manjunatha Cotton and Ginning Factory and the* decision of this Court in the case of *Pr. CIT-19 vs. Dr. Murari Mohan Koley* and allowed the appeal. We find that there was no error in the order passed by the Tribunal. Accordingly, the appeal is dismissed and the substantial questions are answered against the revenue.

6. The stay application, IA NO.GA/2/2020 also stands disposed of.

7. Affidavit of service filed in Court today is kept with the records.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

Pintu kumar Das/Subrata Pal
AR(CR)