Form No.[J2]

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

PRESENT:
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

ITAT/23/2020
IA NO:GA/2/2020 [OLD NO:GA/733/2020]

PRINCIPAL COMMISSIONER OF INCOME TAX-14, KOLKATA
VS.
M/S WEST BENGAL STATE CONSUMER'S CO-OPERATIVE FEDRATION LTD.
....
ITAT/23/2020
IA NO:GA/1/2020 [OLD NO:GA/732/2020]

PRINCIPAL COMMISSIONER OF INCOME TAX-14, KOLKATA
VS.
M/S WEST BENGAL STATE CONSUMER'S CO-OPERATIVE FEDRATION LTD.
....

For the appellant: Mr. Debasish Chowdhury, Adv.
Mr. Soumen Bhattacharyya, Adv.

For the respondent: Ms. Swapna Das, Adv.
Mr. Siddhartha Das, Adv.

Heard on : February 8, 2022.

Judgement on : February 8, 2022.

RE: GA/1/2020 [OLD NO:GA/732/2020)

T.S. SIVAGNANAM, J. : We have heard Mr. Debasish Chowdhury, learned senior standing counsel for the appellant/revenue assisted by Mr.

Soumen Bhattacharyya and Ms. Swapna Das, learned counsel assisted by Mr. Siddhartha Das for the respondent/assessee.

There is a delay of 621 days in filing this appeal. We have perused the affidavit filed in support of the condone delay application and we find that adequate explanation has not been given for lodging the appeal after a period of 621 days. Considering the fact that the appeal filed by the revenue is one under Section 260A of the Income Tax Act, we suggested to the learned counsel appearing on either side to make their submissions on merits, which they have readily agreed. Therefore, we exercise discretion and condone the delay in filing the appeal.

The application, IA NO.GA/1/2020 [OLD No:GA/732/2020] stands disposed of accordingly.

RE: ITAT/23/2020

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 24.1.2018 passed by the Income Tax Appellate Tribunal, "D" Bench, Kolkata (Tribunal) in ITA No.1641/Kol/2016 and C.O. No.54/Kol/2016 for the assessment year 2011-12. The revenue has raised the following substantial questions of law for our consideration.

a. Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, Kolkata erred in law in holding that the assessee is not guilty of having concealed the particulars of income or having furnished inaccurate particulars of income ?

b. Whether on the facts and circumstances of the case and in law, the Learned Income Tax Appellate Tribunal, Kolkata erred in law in holding that in a notice under section 274 of Income Tax Act, 1961 mere mistake in the language used or mere non striking of the inaccurate portion by itself invalidates the notice ?

We have heard Mr. Debasish Chowdhury, learned senior standing counsel for the appellant/revenue assisted by Mr. Soumen Bhattacharyya and Ms. Swapna Das, learned counsel assisted by Mr. Siddhartha Das for the respondent/assessee.

The assessing officer by order dated 28.3.2014 passed under Section 143(3) of the Act completed the assessment and came to the conclusion that there was concealment of income and wrong claim has been made by the assessee stating that the expenses incurred for construction of a compound wall was a capital expenditure. The assessment order attained finality. The assessing officer initiated penalty proceedings under section 271(1)(c) on the two grounds on which the assessments were completed. The assessee sought to explain that they have made a claim that the expenditure incurred for constructing a compound wall would have an enduring effect, to protect the property of the Co-operative society and, therefore, thought it fit to file return claiming expenditure to be capital in nature. With regard to the undisclosed purchase and sale, the assessee explained by stating that there was an error committed in the computer system as a result of which re-conciliation could not be done properly and that the wrong claim made by the assessee was not wilful. The assessing officer did not accept the explanation and confirmed the proposal to impose penalty by an order dated 23.9.2014. Challenging the same, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals)-12, Kolkata (CIT(A)). Elaborate explanation was given which was considered by the CIT(A) and the penalty was deleted. Aggrieved by the same, the revenue preferred appeal before the Tribunal, which has been dismissed by the impugned order. On perusal of the order passed by the CIT(A), we find that the CIT(A) rightly held that merely because a wrong claim was made by the assessee with regard to the expenses incurred for construction of a compound wall that by itself will not be a reason to impose penalty and, accordingly, vacated the penalty on the said head. With regard to the unexplained purchase and sale, the CIT(A) took note of the explanation offered by the assessee and also the fact that the conduct of the assessee was not contumacious or wilful so as to impose penalty. Accordingly, the penalty imposed on the said head was also vacated. When the matter travelled to the Tribunal, the explanation which was given by the assessee and accepted by the CIT(A) was once again examined by the Tribunal and after noting several decisions as to under what circumstances penalty can be imposed under Section 271(1)(c) of the Act as also the fact that there was nothing on record to show that the assessee had purposely made a wrong claim, confirmed the order passed by the CIT(A). Thus, we find that there is no error committed by the CIT(A) or the Tribunal for us to interfere with the said order. Accordingly, the appeal filed by the revenue is dismissed and the substantial questions of law are answered against the revenue.

The stay application, IA NO.GA/2/2020 [OLD NO:GA/733/2020] also stands dismissed.

(T.S. SIVAGNANAM, J.)

I agree.

(HIRANMAY BHATTACHARYYA, J.)

pkd/RS
AR(CR)