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

ITAT/51/2018
IA NO: GA/2/2018(Old No.GA/548/2018)

PRINCIPAL COMMISSIONER OF INCOME TAX, ASANSOL
VERSUS
SHRI CHANDAN ROY, PROP. OF M/S. JOY MAA TARA TRANSPORT

BEFORE :

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

Date : 4th April, 2022

Appearance :-

Mr. Prithu Dudheria, Adv.
... For Appellant

The Court : This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the order dated 12th July, 2017 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata in ITA No. 2562/Kol/2013 (the Tribunal) for the assessment year 2007-08. The revenue has raised the following substantial questions of law for consideration :

a) Whether on the facts and in the circumstances of the case the Learned Tribunal was justified in law in dismissing the appeal of the revenue confirming the decision of the CIT(A) without appreciating the fact that a revised grounds of appeal was filed by the revenue mentioning that the CIT(A) has erred in law and in fact by holding that the re-assessment proceedings is void, ab-initio, thereby cancelling the re-assessment made by the Assessing Officer?

b) Whether on the facts and in the circumstances of the case the Learned Tribunal was justified in law in dismissing the appeal filed by the revenue on the reliefs allowed by the CIT(A) on addition made by the Assessing Officer under Section 40(a)(ia) of the said Act to the tune of Rs.1,15,99,624/-?

We have heard Mr. Prithu Dudheria, learned Standing Counsel appearing for the appellant/revenue.

On perusal of the order passed by the Tribunal we find that the revenue, which was the appellant before the Tribunal, did not appear. The assessee also did not appear. The assessment order dated 6th March, 2013 was an order passed under Section 143(3) read with Section 147 of the Act. Aggrieved by such order, the assessee preferred appeal before the Commissioner of Income Tax (Appeal), Asansol [CIT(A)]. The first appellate Tribunal after considering the entire merits of the matter held that the re-opening of the assessment was bad in law. This finding has been recorded in paragraphs 12 and 13 of the order passed by the CIT(A) dated 2nd September, 2013. The Tribunal considered the correctness of the order and found that there was no reason to come to a different conclusion on facts. The

Tribunal further noted that the finding recorded by the first Appellate authority on the correctness of the reopening of the assessment was not challenged by the revenue before the learned Tribunal.

It appears that there was a cross-objection filed by the assessee without any petition for condonation of delay. The Tribunal dismissed the cross-objection as well. Thus, we find that no question of law, much less substantial questions of law arises for consideration in this appeal. Accordingly, the appeal fails and is dismissed.

With the dismissal of the appeal, the stay application being IA NO: GA/2/2018(Old No.GA/548/2018) stands closed.

Note:

The Principal Commissioner of Income Tax, Asansol is directed to assign LIMBS number to this appeal to enable the learned Standing Counsel to raise the bill. This direction be followed in all cases and necessary instructions be given to the entire Commissionerate.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/SN
AR(CR)