

OD-22

ITAT/48/2021
IA No.GA/1/2021
IA No.GA/2/2021

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

PRINCIPAL COMMISSIONER OF INCOME
TAX -1, KOLKATA

-Versus-

M/S. BROLLY DEALCOM LLP,

Appearance:
Mr. Prithu Dudheria, Adv.
...for the appellant.

Mr. J. P. Khaitan, Sr. Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 16th June, 2022.

The Court : **Re: IA No.GA/1/2021:**

This appeal filed by the revenue is time barred.

There is delay of 603 days in filing the appeal. The respondent/assessee has filed an affidavit-in-opposition stating that the delay has not been explained. An affidavit-in-reply has been filed by the department to the said affidavit-in-opposition in Court today, which is taken on record.

We have elaborately heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue and Mr. J. P. Khaitan, learned senior counsel for the respondent/assessee. On perusal of the affidavit filed in support of the application for condonation of delay as well as the affidavit-in-reply, we find that the explanation given by the department is far from being satisfactory. However, we are conscious of the fact that the present appeal is a second round of litigation and the order impugned in the appeal has been passed by the tribunal after this Court, in the earlier round, remanded the matter to the tribunal for a limited purpose. That apart, we have to examine as to whether any substantial question of law arises for consideration. Therefore, even though there is no satisfactory explanation given in support of the application for condonation of delay, we exercise discretion and condone the delay in filing the appeal. For such reason alone, the application for condonation of delay (IA No.GA/1/2021) is allowed.

Re: ITAT/48/2021:

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 1st February, 2019 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in ITA No.1543/Kol/2013 for the assessment year 2008-09.

The revenue has raised the following substantial questions of law for consideration :

- I) *Whether the Income Tax Appellate Tribunal erred in law in not sustaining the order of the CIT under Section 263 of the Income Tax Act, 1961 in the facts and circumstances of the case ?*
- II) *Whether the Income Tax Appellate Tribunal erred in law in not at least setting aside the order of the CIT to his file for passing fresh order after providing reasonable opportunity to the assessee of being heard ?*
- III) *Whether the Income Tax Appellate Tribunal erred in law in treating the order under Section 263 of the Income Tax act, 1961 is bad in law as the assessee has not been provided opportunity before passing such order although sufficient opportunities have been provided to the assessee of being heard ?*

We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue and Mr. J. P. Khaitan, learned senior counsel for the respondent/assessee.

The present appeal is a second round of litigation. In the first round of litigation, the matter travelled up to the tribunal and the assessee's case was tagged along with a batch of cases wherein the question was whether assumption of jurisdiction by the Commissioner of Income Tax under Section 263 of the Act was justified or not. The appeal filed by the assessee was dismissed along with a batch of cases. Aggrieved by the same, the assessee

preferred appeal before this Court in ITA/25/2018 and by judgment and order dated 7th May, 2018, the Division Bench allowed the appeal on the ground that the contention advanced by the assessee with regard to non-service of notice was not specifically considered by the tribunal. Accordingly, the order passed by the tribunal was set aside and the matter was remanded to the tribunal to consider the issue as to whether the respondent/assessee, as successor-in-interest of the original assessee, had notice of knowledge of any hearing fixed by the Commissioner prior to the Commissioner passing the order under Section 263 of the Act. On remand, the tribunal has taken up the matter and we find that factual exercise had been done by the tribunal and all the records placed by the department were considered and the tribunal was satisfied that there has been gross violation of principles of natural justice. Accordingly, the appeal filed by the assessee was allowed. The revenue has challenged this order by filing the present appeal and from the memorandum of grounds, we find that the revenue seeks to convert this Court as if it is a second appellate Court over the findings of the tribunal. The present appeal, being one under Section 260A of the Act, what is required to be seen is as to whether any substantial question of law arises for consideration and the jurisdiction of this Court is not to re-appreciate the factual conclusion arrived at by the tribunal. As pointed out earlier, the tribunal, after the matter was remanded,

has done an elaborate factual exercise and decided in favour of the assessee. Thus, we find that there is no question of law much less substantial question of law arises for consideration in this appeal.

Accordingly, the appeal (ITAT/48/2021) stands dismissed. Consequently, the connected application for stay (IA No.GA/2/2021) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)