OD-21&22

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

ITAT/52/2021
IA NO: GA/1/2021
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VERSUS
BHAGIRATHI TIE UP PVT. LTD.

ITAT/52/2021
IA NO: GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VERSUS
BHAGIRATHI TIE UP PVT. LTD.

BEFORE :

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

Date : 11th April, 2022

Appearance :-

Mr. Soumen Bhattacharjee, Adv.
Mr. S.N. Surana, Adv.
... For Appellant

IA NO: GA/1/2021

The Court : We have heard Mr. Soumen Bhattacharjee, learned Standing Counsel appearing for the appellant/revenue. Notice on the respondent has been served by the learned Standing Counsel though the Ministry of Law & Justice failed to serve notice in spite of our direction on the earlier occasion.

None appears for the respondent/assessee.

There is a delay of 427 days in filing the appeal. Though we find explanation offered is not satisfactory, since we are of the view that the appeal itself could be taken up for consideration as the issue is whether the appeal was maintainable or not, therefore the learned Standing Counsel was directed to address arguments on the main appeal itself, which he has readily agreed. Only for such reason we exercise discretion and condone the delay in filing the appeal. The application for condonation of delay being GA 1/2021 is allowed.

ITAT/52/2021

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 20th September, 2019 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata in ITA No.1593/Kol/2016 for the assessment year 2009-10. The revenue has raised the following substantial questions of law for consideration :

i) Whether in the facts and circumstances and in law involved in this case the ITAT erred in deleting the addition of Rs. 17,63,00,000/- under Section 68 of the Income Tax Act, 1961 on account of unexplained sum credited in the book as Share Capital and Premium ?

ii) Whether the order impugned in this appeal is erroneous in law and in fact in deleting the addition made by the Assessing

Officer by order under Section 144/263 of the Income Tax Act, 1961 based on remand report ignoring the fact that the assessee failed to produce the share Applicants/Directors in compliance to the direction contained in order under Section 263 of the Income Tax Act, 1961 ?

iii) Whether the order impugned in this appeal is erroneous in law and in fact when the ITAT ignored the fact that the identity, credit worthiness and genuineness of the transaction has not been explained by the assessee satisfactorily ?

We have heard Mr. Soumen Bhattacharjee, learned Standing Counsel appearing for the appellant/revenue.

The first question to be considered in the instant case is whether the Tribunal was right in affirming the order passed by the Commissioner of Income Tax (Appeals) - 4, Kolkata [CIT(A)], dated 3rd June, 2016 by noting the facts and circumstances of the case that the remand report was called for from the Assessing Officer, who has certified the genuineness of the transaction and the creditworthiness and the identity of the share applicants. The Tribunal after noting the findings recorded by the CIT(A) held that the revenue has no locus standi to file the appeal against its own findings in the remand report. In this regard, the Tribunal placed reliance on the decision of the High Court of Madras in the case of Smt. B. Jayalakshmi v. Assistant Commissioner of Income-tax, Salary Circle-II, Chennai [2018] 96 taxmann.com 486 (Madras). The Tribunal also referred to the decision of a coordinate Bench of the Tribunal in the case of D.C.I.T, Central Circle-1(4), Kolkata vs. M/s. Shraddha Tower Pvt. Ltd., 2018(10) TMI 1405 – ITAT Kolkata and dismissed the appeal filed by the revenue.

We find that the Tribunal has rightly taken note of the legal position and dismissed the appeal filed by the revenue and we find no grounds to interfere with the said order. Accordingly, the appeal is dismissed and substantial questions of law are answered against the revenue.

With the dismissal of the appeal, the stay application being IA No: GA/2/2021 also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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AR(CR)