OD-46

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

ITA/31/2020
PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-1
VS.
M/S. VERONICA COMMERCE PVT. LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 31st October, 2022

Appearance :
Mr. Tilak Mitra, Adv.
... for appellant
Ms. Swapna Das, Adv.
...for respondent

The Court : 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 28th February, 2018 passed by the Income Tax Appellate Tribunal, "D" Bench, Kolkata, in I.T.A. No. 2445/Kol/2016 for the assessment year 2007-08.

The appeal was admitted on 3rd March, 2020 on the following substantial questions of law :-

"Whether the penalty proceedings under Section 27a(1)(c) of the Income Tax Act, 1961 are invalid if the show-cause notice does not specifically spell out the grounds for imposition of the proposed penalty?"

We have heard Mr. Tilak Mitra, learned standing Counsel appearing for the appellant/revenue and Ms. Swapna Das, learned Advocate, led by Mr. J.P. Khaitan, learned senior Counsel appearing for the respondent/assessee.

On perusal of the order passed by the learned Tribunal, we find that he Tribunal had examined the factual position and found that the show cause notice issued under Section 274 of the Act was defective. The learned Tribunal had also noted various decisions of this Court wherein it has been held that when the notice issued under Section 274 of the Act was defective, the defect is incurable as it goes to the root of the matter. Therefore, we find that the Tribunal rightly granted relief to the assessee.

Accordingly, the appeal fails and is dismissed.

The substantial question of law is answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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