

OD -21 & 22

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

IA NO.GA/1/2021
In
ITAT/70/2021
PRINCIPAL COMMISSIONER OF INCOME TAX - 1, KOLKATA
VS.
M/S. BOULEVARD SERVICES PVT. LTD.

IA NO.GA/2/2021
In
ITAT/70/2021
PRINCIPAL COMMISSIONER OF INCOME TAX - 1, KOLKATA
VS.
M/S. BOULEVARD SERVICES PVT. LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
A N D
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : February 14, 2022.

[Via Video Conference]

Appearance :
Mr. S.N. Dutta, Adv.
... for the appellant

Mr. Pratyush Jhunjhunwala, Adv.
Ms. Swapna Das, Adv.
... for the respondent

The Court : We have heard Mr. S.N. Dutta, learned standing counsel appearing for the appellant/revenue and Mr. Pratyush Jhunjhunwala, duly assisted by Ms. Swapna Das, learned counsel for the respondent/assessee.

There is a delay of 816 days in filing the appeal. The respondent has filed affidavit-in-opposition vehemently opposing the delay. On

perusal of the averment set out in the condone delay application, we find the reasons given are far from satisfactory. However, considering the fact that this appeal has been filed under Section 260A of the Act, we suggest the learned counsel to make submissions on merits of the matter and upon their consent, we are inclined to exercise discretion and condone the delay in filing the appeal. Hence, the petition is allowed.

ITAT 70 of 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 24th August, 2018 passed by the Income Tax Appellate Tribunal, Bench 'C', Kolkata (Tribunal) in ITA No. 1741/Kol/2016, 1577/Kol/2017 and 2070/Kol/2016 for the assessment year 2008-09.

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

1. Whether the Learned Income Tax Appellate Tribunal was justified in passing the impugned order confirming the order of CIT(A) whereby the said CIT(A) entertained fresh evidence in violation of Rule 46A, Income Tax Rules 1962 and came to an erroneous decision that furniture, plant and machinery were acquired and fitted at the assessee's premises which is patently wrong and latently irregular?

2. Whether the order of the Learned Income Tax Appellate Tribunal is at all sustainable in as much as there is a contradiction between the plea before CIT(A) and that of tax audit report to the extent that the depreciation on addition between 1st October and 31st March 2008 the same could not put to use in September 2007 and as such the Order of Learned ITAT is perverse?

We have heard Mr. S.N. Dutta, learned standing counsel appearing for the appellant/revenue and Mr. Pratyush Jhunjhunwala, duly assisted by Ms. Swapna Das, learned counsel for the respondent/assessee.

The first question of law suggested by the revenue is questioning the order of the CIT(A) as affirmed by the Tribunal on the ground that the CIT(A) has entertained fresh evidence in violation of Rule 46A of the Income Tax Rules 1962. On a perusal of the order passed by the Tribunal we find that such objection was not raised by the revenue with regard to the claim for depreciation, with regard to furniture, plant and machinery which were acquired and fitted at the assessee's premises. This is evident from perusal of paragraph 8 of the order passed by the Tribunal. That apart on facts, we find that the Tribunal has examined the factual position which was considered in detail by the CIT(A) and affirmed the decision of the CIT (A) on facts. Thus, we find no substantial question of law arising under the said issue.

With regard to the second issue, namely, that a contrary plea has been raised by the assessee before the CIT(A) and that which was

found in the tax audit report with regard to the brokerage expenses. In fact on this issue, the revenue raised the contention that the CIT(A) has admitted evidence in violation of Rule 46A of the Rules. The correctness of the submission was tested by the Tribunal and in paragraph 7, has given a factual finding that the CIT(A) has accepted the claim of the assessee based on the available record that brokerage in question is only in respect of furniture and fixture let out much earlier as supported by confirmation from the payees concerned. Therefore, the Tribunal upheld the factual conclusion arrived at by the CIT(A). Therefore, we find no substantial question of law arising for consideration from this issue as well.

In the result, the appeal filed by the revenue fails on the ground that no substantial question of law arises out for consideration.

Consequently, the appeal stands dismissed.

Connected stay application also stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)