OD- 1 & 2

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

IA No.GA/2/2018 (Old GA/866/2018)
ITAT/110/2018

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA - 4
-Versus-
M/S. AMBIKA SAREES P. LTD.

IA No.GA/1/2018 (Old GA/865/2018)
ITAT/110/2018

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA - 4
-Versus-
M/S. AMBIKA SAREES P. LTD.

Appearance:
Mr. Aryak Dutta, Adv.
...for the appellant.

Mr. S.M. Surana, Adv.,
Mr. Bhaskar Sengupta, Adv.,
. . . for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 7th April, 2022.

RE : GA/1/2018

The Court : We have heard Mr. Aryak Dutta, learned standing counsel appearing for the appellant/revenue and Mr. S.M. Surana, learned counsel appearing for the respondent/assessee.

There is a delay of 189 days in filing the appeal. We are satisfied with the reasons for not being able to file the appeal in time. Hence, the delay in filing the instant appeal is condoned and the application (GA/1/2018) is allowed.

RE : ITAT/110/2018

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 24th May, 2017 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (in short the 'Tribunal') in ITA No.1860/Kol/2014 for the assessment year 2011-12.

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

"I) Whether on the facts and in the circumstances of the case Ld. Tribunal has erred in law as well as on facts in deleting addition on account of under valuation of stock without considering relevant pieces of evidences recorded during survey?

II) Whether on the facts and in the circumstances of the case Ld. Tribunal has erred in law as well as on facts in deleting addition on account of under valuation of stock without considering admission of the Director of the assessee in this regard made twice in a gap of about one month?

III) Whether on the facts and in the circumstances of the case Ld. Tribunal has erred in law as well as on facts in overlooking the fact that difference in quantity of sarees found during survey operation

> *could not be reconciled by the assessee before the Assessing Officer?"*

We have heard Mr. Aryak Dutta, learned standing counsel appearing for the appellant/revenue and Mr. S.M. Surana, learned counsel appearing for the respondent/assessee.

A survey operation under Section 133A of the Act was conducted in the place of the business of the assessee during March 2011. Pursuant to which, notices were issued and the assessment was completed under Section 143(3) by order dated 21st March, 2014. The only issue, which was the subject-mater of the assessment, was under valuation of the product sold by the assessee which was sarees. The assessee preferred an appeal before the Commissioner of Income Tax (Appeals) – XII, Kolkata. We find from the order passed by the CIT(A) that elaborate submissions were made and also the documents, affidavits, sale bills etc. were produced to show as to how the valuation as adopted by the assessee was correct and justified. The assessee also submitted before the CIT(A) that the assessment has been completed on the alleged ground of under valuation of stock solely relying upon a statement which was recorded from the director of the assessee company during the course of survey proceedings. The issue as to whether the said statement could have been made the sole basis for revision of assessment or to conclude that there was under valuation of the stock elaborately discussed by the CIT(A). The

CIT(A) also took note of the decision in the case of *CIT Vs. Khader Khan Son (2008) 300 ITR 157 (Mad)* which was affirmed by the Hon'ble Supreme Court as reported in *(2013) 352 ITR 480 (SC)* wherein it has been held that the Department should not insist on making any disclosure and further such disclosure made in the course of survey should not be relied upon and the assessment should be based on the papers found and impounded during the course of survey. After noting the said decision, the CIT(A) has, in our view, thoroughly examined the factual position including the reply given by the assessee to the remand report called for from the assessing officer. Ultimately, the appeal was allowed in favour of the assessee by order dated 11th July, 2014.

Aggrieved by such order, the assessee preferred appeal before the tribunal. The tribunal on its part re-examined the particulars and took note of the stand taken by the assessee during the assessment proceedings as well as before the CIT(A) and the factual findings recorded by the CIT(A) and dismissed the appeal filed by the impugned order. Thus, we find that the entire issue is fully factual and the first appellate authority as well as the tribunal have appreciated and re-appreciated the findings on record and granted relief to the assessee. Thus, we find that there is no question of law much less the substantial question of law arising for consideration in this appeal.

Accordingly, the appeal fails and is hereby dismissed. Consequently, the application for stay (GA/2/2018) stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das
AR[CR]