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

ITAT/26/2010
IA NO: GA/1/2010 (OLD NO: GA/865/2010),
GA/2/2010 (OLD NO: GA/866/2010)

COMMISSIONER OF INCOME TAX, CENTRAL – III
VS.
M/S. JODH SINGH & ORS. (HUF)

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

Date : February 15, 2022.

[Via Video Conference]

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

Mr. J.P. Khaitan, Sr. Adv.
Ms. Swapna Das, Adv.
Mr. Siddharth Das, Adv.
... for the respondent

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

There is a delay of 84 days in filing the appeal. We have perused the affidavit filed in support of the delay condone application. We find sufficient cause has been shown. Therefore, the delay in filing the appeal is condoned.

Accordingly, the application for condonation of delay stands allowed.

RE : ITAT/26/2010

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act for brevity) is directed against the order dated 24th July, 2009 passed by the Income Tax Appellate Tribunal, “B” Bench, Kolkata (Tribunal) in ITA No. 219/Kol/2009 and ITA No. 119/Kol/2009 for the assessment years 2004-05.

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

a. Whether on the facts and in the circumstances of the case the Learned Tribunal was justified in law in upholding the order of the C.I.T. (A) Central-III, Kolkata wherein the disallowance of loss amounting to Rs.1,90,53,909/- on account of cattle loss made by the A.O. was deleted, even if the conditions laid down in section 36(i) (vi) of the Income Tax Act, 1961 were not satisfied by the assessee?

b. Whether on the facts and in the circumstance of the case the Learned Tribunal was justified in law in upholding the order of the C.I.T.(A) Central-III, even when the claim of loss was not supported by evidence and charged in P & L A/c, though the net profit was determined at a rate on sale turnover as directed by the learned Tribunal?

We have heard Mr. S.N. Dutta, learned standing counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel, duly assisted by Ms. Swapna Das and Mr. Siddharth Das, learned counsel for the respondent/assessee.

It is pointed out by the learned senior counsel appearing for the respondent/assessee that the tax effect in this case is less than Rs.1 crore and, therefore, the Circular issued by the CBDT would apply and the appeal cannot be pursued by the department.

In this regard our attention was drawn to the order passed by the Commissioner of Income Tax (Central) (A) -III [CIT(A)] dated 17.11.2008 which shows that the demand raised pursuant to the order of the assessing officer dated 29.12.2006 is Rs. 97,54,105/-. In this regard, the appellant/department has not given any written instruction to the learned standing counsel for the revenue. Apart from that we have also considered the finding rendered by the Tribunal with regard to the addition made by the assessing officer on account of loss of sale of cattle. The Tribunal noted that similar orders in assessee's own case was considered and such addition was deleted. Thus, following a consistent view, the Tribunal dismissed the revenue's appeal. Therefore, we find that there is no error in the order passed by the Tribunal.

Accordingly, the appeal fails and stands dismissed.

Substantial questions of law are answered against the revenue.

Consequently, connected application also stands dismissed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

RS/GH