OD-10

ITAT/97/2021
IA No.GA/1/2021
IA No.GA/2/2021

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

PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA

-Versus-

M/S. MANCHEST FINPRO (P) LTD.

Appearance:
Mr. Vipul Kundalia, Adv.
Mr. Anurag Roy, Adv.
...for the appellant.

Mr. Hemant Tiwari, Adv.
...for the respondent.

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

Date : 30th June, 2022.

The Court : We have heard Mr. Vipul Kundalia, learned standing counsel assisted by Mr. Anurag Roy, learned advocate for the appellant and Mr. Hemant Tiwari, learned Advocate for the respondent.

There is a delay of 823 days in filing the appeal.

We have perused the affidavit filed in support of the application for condonation of delay and we find that at every stage there has been delay in finalising the draft memorandum of appeal and the required application. Admittedly, the order passed by the learned tribunal was received in the department on 20th December, 2018. Thereafter the papers travelled from one officer to another and ultimately the appeal was filed on 20th July, 2021.

Though we are not fully convinced with the reasons assigned in the application for condonation of delay, but keeping in view that the appeal has been filed under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) wherein we are required to consider whether any substantial question of law arises for consideration, we exercise discretion and condone the delay in filing the appeal.

For this reason, the application for condonation of delay (IA No.GA/1/2021) is allowed and the delay in filing the appeal is condoned.

This appeal filed by the revenue under Section 260A of the Income Tax Act, is directed against the order dated 31st October, 2018 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata in ITA No.380/Kol/2017 for the assessment year 2012-13.

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

"(i) Whether the Income Tax Appellate Tribunal erred in law in deleting the addition of Rs.7,76,96,000/- made by Assessing Officer under section 68 of the Income Tax Act, 1961 to the assessee failed to prove by cogent evidence as to the identity, creditworthiness genuineness of the share applicants, further the summons issued to the alleged subscribers returned 'un'-served' which prove their existence is in question but the Income Tax Appellate Tribunal hold otherwise?

(ii) Whether in the facts and circumstances of the case, section 68 of the Income Tax Act, 1961 applicable even if cheques received by assessee from various creditors were not presented for collection in bank, still amount mentioned in those cheques were found credited in assessee's books of accounts?

(iii) Whether on the facts and circumstances of the case the Learned Tribunal was unwarranted in upholding the order of the Commissioner of Income Tax (Appeal) whereby relief of Rs.7,76,96,000/- was granted by Commissioner of Income Tax (Appeal) ignoring the fact that Commissioner of Income Tax (Appeal) allowed the relief by taking into consideration extraneous factors and excluding from consideration facts and circumstances relevant to the case and as such the order of the Learned Tribunal is perverse in law as well as facts?

(iv) Whether the Learned Tribunal committed substantial error of law in dismissing the appeal of the Revenue by holding that no infirmity of the order of the Commissioner of Income Tax (Appeal) without giving any cogent reason?"

We have heard Mr. Vipul Kundalia, learned standing counsel for the appellant and Mr. Hemant Tiwari, learned Advocate for the respondent.

After we have elaborately heard the learned Advocates for the parties and perused the materials on record, we find that the Commissioner of Income Tax (Appeals)-5, Kolkata [CIT(A)] has done a thorough factual exercise while considering the case of the assessee. More particularly, the CIT(A) had elaborately referred to the reply given by the assessee dated 23/24th March, 2015 which has been quoted in the order of the CIT(A) dated 30th December, 2016. We find from the said reply that documents are annexed in support of each and every plea to prove the genuineness of the transaction, identities of the parties, etc. More importantly, the assessee pointed out that the investors had not invested the monies during the financial year 2011-12 but the amount was due to the two allottee companies. Ultimately, the CIT(A) found that the said submission to be true as there was no money received in the financial year 2011-12 and the addition could not have been made in the year under consideration.

The revenue challenged the said order before the tribunal and after noting the factual position, the tribunal dismissed the revenue's appeal. The learned tribunal also pointed out that the CIT(A) has referred to the decision of this Court in Jatia Investment Company vs. CIT reported in (1994) 206 ITR 718 (Cal).

Mr. Vipul Kundalia, learned advocate for the appellant submitted that there are other subsequent decisions on the said point and the decision in Jatia is distinguishable. In our considered view, such exercise may not be required in the instant case as we find that, on facts, the tribunal affirmed the view taken by the CIT(A). Therefore, we find that no question of law much less substantial question of law arises for consideration in this appeal.

Accordingly, the appeal (ITAT/97/2021) fails and is dismissed.

Consequently, the connected application for stay (IA No.GA/2/2021) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/As.