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

ITAT/175/2018
IA No.GA/1/2018 (OLD NO. GA/1225/2018)
GA/2/2018 (OLD NO. GA/1226/2018)
PRINCIPAL COMMISSIONER OF INCOME TAX KOLKATA – 12, KOLKATA
VS.
SRI RAGHU NANDAN MODI

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK
Date : 26th July, 2022

Appearance :
Mr. Prithu Dudhoria, Adv…
for the appellant.

Mr. Sohom Sen, Adv.
….for respondent.

GA/1/2018

The Court : There is a delay of 124 days in filing the appeal.

We have perused the affidavit filed in support of the petition and find that sufficient cause has been shown for not having preferred the appeal within the time. Hence, the delay is condoned. The application is allowed.

ITAT/175/2018

We have heard Mr. Prithu Dudhoria, learned standing Counsel for the appellant and Mr. Sohom Sen, learned Advocate for the respondent.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 11th August, 2017 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata (Tribunal) in I.T.A. No. 1087 to 1090/Kol/2015 for the assessment year 2006-07 to 2009-10 along with C.O. Nos. 41 to 44/Kol/2015 for the assessment years 2006-07 to 2009-10.

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

i) Whether on the facts and the circumstances of the case, the Learned Income Tax Appellate Tribunal, "B" Bench, Kolkata was erred in law and on facts in determining the annual value of the property as provided in Section 23(1)(a) and (b) of the Income Tax Act, 1961 ?

ii) Whether on the facts and the circumstances of the case the Learned Tribunal misdirected itself in holding that as the assessee was not drawing any salary from Prabhukripa Overseas Limited, then the perquisites cannot be determined in terms of the provision of Section 17(2) of the Income Tax Act, 1961 read with Rule 3 of the Income Tax Rules, 1962 ?

iii) Whether on the facts and the circumstances of the case the Learned Tribunal misdirected itself by holding that the provisions of Section 28(iv) of the Income Tax Act, 1961 are attracted if the benefit of perquisites is arising to the assessee from the business or exercise of the profession ?

We have heard Mr. Prithu Dudhoria, learned standing Counsel for the appellant and Mr. Sohom Sen, learned Advocate for the respondent.

It is pointed out by the learned Advocate for the respondent/assessee that in all the four assessment years which are involved in this appeal the tax effect is less than the threshold limit fixed by the C.B.D.T. in their circular. This is evident from the order passed by the Commissioner of Income Tax (Appeal) – 10, CIT(A) dated 22.5.2015. From the said order we find that the demand raised for the assessment year 2006-07 is Rs.64,44,320, for the assessment year 2007-08 is Rs.59,37,580/- , for the assessment year 2008-09 is Rs.56,07,100/- and for the assessment year Rs.52,31,270/-.

Thus the tax effect in this appeal for all the four assessment years is below the threshold limit fixed in the circular. For such reason, the appeal cannot be proceeded with by the revenue and the same stands disposed of on the ground of low tax effect.

Consequently, the substantial questions of law are left open.

The application GA/2/2018 stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

Pkd/GH