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ITAT/111/2021
IA NO: GA/1/2021, 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. ABA EARTHLINE COMMUNICATIONS LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

Date : 1st August, 2022.

Appearance:-
Ms. Smita Das De, Adv.
... For Appellant
Mr. S.M. Surana, Adv.
Mr. B. Sengupta, Adv.
... For Respondent

GA/1/2021

The Court : We have heard Ms. Smita Das De, 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 844 days in filing the present appeal. We are satisfied with the reasons assigned in the affidavit filed in support of the

condone delay application. Accordingly, the delay in filing the appeal is condoned. The application for condonation of delay is allowed.

ITAT/111/2021

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 9th November, 2018, passed by the Income Tax Appellate Tribunal “D” Bench, Kolkata (Tribunal) in I.T.A No. 1141/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. 40,24,70,000/- made by the Assessing Officer under Section 68 of Income Tax Act, 1961 and confirmed by the Commissioner of Income Tax(Appeal) as the assessee failed to establish the creditworthiness, identity and genuineness of transaction for which credit in the books of accounts ?
- ii) Whether the order of Income Tax Appellate Tribunal is sustainable in as much as it has decided the appeal on the basis of decision reported in ITR 308 (SC) but overlooking the recent judgement of Rajmandir’s case of jurisdictional High Court confirmed by Supreme Court as such the order of Income Tax Appellate tribunal is wrong and liable to be set aside ?

We have heard Ms. Smita Das De, learned standing counsel appearing for the appellant/revenue and Mr. S.M. Surana, learned counsel appearing for the respondent/assessee.

The revenue is aggrieved by the order passed by the Tribunal by which the appeal filed by the assessee was allowed. Before we examine the correctness of the order, first we are required to note the conduct of the assessee. The return of income filed by the assessee was sent for scrutiny and notices were issued to the assessee under Sections 143(2) and 142(1) of the Act. It appears that the assessee was represented by the authorised representative and produced the Books of account, audited accounts and other relevant details and documents. Thereafter, the Assessing Officer conducted an enquiry and he has recorded in his order dated 20th March, 2015 that though repeated reminder letters were sent to the assessee requesting to the principal officer of the assessee company to appear with the complete set of books of accounts and relevant documents, none had appeared before the Assessing Officer. Further, the Assessing Officer noted that the Directors of the 'share subscribing companies' have not appeared to substantiate their personal identity, the existence, identity, creditworthiness and sources of funds of the subscriber companies to make payment of share application money to the assessee company and the genuineness of the shares subscription transactions claimed by the assessee company were also not established. Therefore, having left with no option, the Assessing Officer completed its assessment.

Aggrieved by the same, the assessee preferred appeal before the Commissioner of Income Tax (Appeals), Kolkata [CIT(A)]. Though the appeal was instituted and the notice issued, it was fixed only on 28th February, 2017. On the said date, there was no appearance on behalf of the assessee. The CIT(A) has noted that notice under Section 250 was issued on 26th October, 2016 by which the date of hearing was fixed on 8th November, 2016. On the said date none appeared on behalf of the appellant nor any written request was made seeking adjournment. Therefore, the CIT(A) issued fresh notice fixing the hearing date on 15th December, 2016 and 3rd February, 2017, but there was no compliance. Therefore, the CIT(A) had no other option and by order dated 28th February, 2017 dismissed the appeal.

Aggrieved by the same, the assessee went on appeal before the Tribunal raising various grounds. The learned Advocate for the respondent assessee points out that in paragraph 5 of the order passed by the Tribunal the facts have been noted and the Tribunal following its earlier decision has allowed the appeal and there is no error. From paragraph 5 of the impugned order we note that Tribunal has stated that the facts of the case are not in dispute. It is not clear on what basis the Tribunal came to such a conclusion. The Tribunal has not recorded that the revenue has conceded to the documents details produced by the assessee for the first time before the Tribunal. According to the Tribunal, those documents were available in the assessment file.

Be that as it may, the assessee was bound to co-operate in the assessment proceedings. In spite of several notices the assessee did not even care to reply to the said notices nor respond to the notices. Therefore, we are required to examine the correctness of the order passed by the Tribunal on merits. It will be rewarding a person who does not require such an indulgence. Therefore, we are of the considered view that the Tribunal fell in error by stating that the facts are not in dispute. Then the enquiry could not be completed by the Assessing Officer on account of supine interference on the part of the assessee in not co-operating with the assessment proceedings. Therefore, we are of the clear view that the matter has to be remanded back to the Assessing Officer for fresh consideration.

In the result, the appeal is allowed.

The order passed by the Tribunal is set aside.

Consequently, the order passed by the Commissioner is also set aside and the matter is remanded to the Assessing Officer for fresh consideration. The Assessing Officer shall issue only one notice to the assessee fixing a date. In the said notice all the requirements to be complied with by the assessee should be clearly mentioned and also the persons who are required to be present before the Assessing Officer.

No requests for adjournment shall be entertained. The assessee is given only last opportunity to co-operate in the assessment proceedings before the Assessing Officer. If they fail to do so, the benefit of this order will not enure to the assessee and the order of assessment dated 20th March,

2015 passed under Section 143(3) of the Act shall automatically stand revived without any further reference to this Court and the Assessing Officer shall be entitled to initiate proceedings for recovery of the tax, interest and penalty as computed.

Consequently, the substantial questions of law are left open.

The stay application being GA/2/2021 is closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)