OD 3 & 4

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

ITAT/201/2017
IA NO:GA/1/2017 [OLD NO:GA/1771/2017]

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-4, KOLKATA
VS.
PAHARPUR PRAGNYA TECH PARK PVT. LTD.
………
ITAT/201/2017
IA NO:GA/2/2017 [OLD NO:GA/1772/2017]

PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-4, KOLKATA
VS.
PAHARPUR PRAGNYA TECH PARK PVT. LTD.
………

PRESENT:
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date: 10th February, 2022.

Appearance:
Mr. Tilak Mitra, Adv.
Mr. Madhu Jana, Adv.
…for the appellant.

RE: GA/1/2017 [OLD NO:GA/1771/2017)

The Court: We have heard Mr. Tilak Mitra, learned senior standing counsel for the appellant/revenue assisted by Mr. Madhu Jana.

There is a delay of 127 days in filing this appeal. We have perused the affidavit filed in support of the condone delay application and we find that sufficient causes have been shown. However, notice on the respondent has not been shown to have been served by the appellant though time was granted. Therefore, we suggested to the learned counsel for the appellant to make submission on the merits of the matter. To this suggestion, the learned counsel readily agreed to make submission on the merits of the matter. For such reason, we exercise discretion and condone the delay in filing this appeal.

The application, IA NO.GA/1/2017 [OLD No:GA/1771/2017] stands disposed of accordingly.

RE: ITAT/201/2017

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961, (the Act, in brevity) is directed against the order dated 27.7.2016 passed by the Income Tax Appellate Tribunal, "B" Bench, Hyderabad (Tribunal) in ITA Nos.355 & 356/Hyd/2012 for the assessment years 2007-08 and 2008-09. The revenue has raised the following substantial question of law for our consideration.

a. Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, erred in law in holding that the rental income derived by the assessee from leasing of IT Park under the head of business of income as opposed to "income from house property" as assessed by the assessing officer ?

We have heard Mr. Tilak Mitra, learned senior standing counsel assisted by Mr. Madhu Jana, learned counsel for the appellant/revenue.

The substantial question of law raised before us has been considered in several cases and more importantly by the Hon'ble Supreme Court in the case of Chennai Properties & Investments Ltd vs.CIT. in Civil Appeal No.4494 of 2004 wherein on more or less identical facts the income earned by the assessee was held to be business income and not income from house property. We find from the impugned order that the Tribunal has taken note of the decision of the Hon'ble Supreme Court in Chennai Properties & Investments Ltd vs.CIT. Therefore, we find no error in the order passed by the Tribunal. Accordingly, the appeal filed by the revenue is dismissed and the substantial question of law is answered against the revenue.

The stay application, IA NO.GA/2/2017 [OLD NO:GA/1772/2017] also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

pkd/s.pal
AR(CR)