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

ITAT/138/2019
IA No.GA/1/2019 (OLD NO. GA/1789/2019)
GA/2/2019 (OLD NO. GA/1790/2019)
THE PRINCIPAL COMMISSIONER OF INCOME TAX KOLKATA – 2
VS.
M/s. EXPERT JEWELLERS PVT. LIMITED

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.

GA/1/2019

The Court : We have heard Mr. Prithu Dudhoria, learned standing Counsel for the appellant.

There is a delay of 322 days in filing the appeal.

Since we are inclined to take up the appeal for consideration and to examine as to whether any substantial questions of law arise for consideration we exercise discretion and condone the delay in filing the appeal.

Accordingly, the application is allowed.

ITAT/138/2019

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 4th April, 2018 passed by the Income Tax

Appellate Tribunal, Kolkata “D” Bench (Tribunal) in I.T.A. No. 61/Kol/2017 for the assessment year 2008-09.

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

i) Whether the Income Tax Appellate Tribunal erred in law in holding that since the Assessing Officer did not specify the reasons or charge against the assessee as to whether the penalty was imposed for concealment of income or furnishing inaccurate particulars of income whereas there is no such strict stipulation in section 271 of the Income Tax Act, 1961 and as such the order of Income Tax Appellate Tribunal is perverse ?

We have heard Mr. Prithu Dudhoria, learned standing Counsel for the appellant.

The Tribunal has allowed the appeal filed by the assessee after noting that show cause notice issued under Section 274 of the Act does not specify the charge against the assessee as to whether it is for concealment of particulars of income or furnishing of inaccurate particulars of income. At this juncture it is now relevant to take note of the decision of the High Court of Karnataka in the case of *CIT VS. MANJUNATHA COTTON AND GINNING FACTORY ;(2013) 359 ITR 565* wherein it was held imposition of penalty under Section 271(1)(c) of the Act is bad in law and invalid for the reasons that the show cause notice under Section 274 of the Act does not specify the charge against the assessee as to whether it is for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal after examining the facts has concluded that the show cause notice under Section 274 of the Act was defective. We find that there is no perversity in the approach of the Tribunal to reexamine the fact which is not required to be done in appeal under Section 260A of the Act.

For the above reason there is no substantial question of law, much less substantial questions of law arise for consideration.

Accordingly the appeal fails and dismissed.

The application GA/2/2019 stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

Pkd/GH