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

ITAT/212/2018
IA No.GA/1/2018 (OLD NO. GA/1820/2018)
GA/2/2018 (OLD NO. GA/1821/2018)
THE PRINCIPAL COMMISSIONER OF INCOME TAX KOLKATA – 11, KOLKATA
VS.
ASHIANA AMAR DEVELOPERS , 5F, EVEREST HOUSE, 46/C, CHOWRINGHEE ROAD, KOLKATA-700071

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

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

Mr. Pratyush Jhunjhunwala, Adv.
Mr. Mrigank Kejriwal
….for respondent.

GA/1/2018

The Court : We have heard Mr. Tilak Mitra, learned standing Counsel for the appellant and Mr. Pratyush Jhunjhunwala learned Advocate assisted by Mr. Mrigank Kejriwal, learned Advocate for the respondent/assessee.

There is a delay of 118 days in filing the appeal.

We have perused the affidavit filed in support of the petition and found that sufficient cause has been shown for not being able to prefer the appeal within the period of limitation. Accordingly, the application is allowed and the delay in filing the appeal is condoned.

ITAT/212/2018

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 6th October, 2017 passed by the Income Tax Appellate Tribunal, Kolkata "D" Bench (Tribunal) in I.T.A. No. 1307/Kol/2015 for the assessment year 2012-13.

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 has erred in law in upholding the order passed by the Learned Commissioner of Income Tax (Appeals)-9, Kolkata thereby allowing the claim by the assessee for deduction of Rs.11,01,49,340/- under Section 80IB of the Income Tax Act, 1961 whereas the assessee failed to fulfill the conditions for claiming deduction under Section 80IB of the Income Tax Act, 1961 ?

ii) Whether on the facts and the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in allowing deduction of Rs.11,01,49,340/- under section 80IB of the Income Tax Act, 1961 where admittedly the project was not complete in terms of the agreement in as much as failure to produce completion certificate from the Development Authority in violation of section 80IB(10) of the Income Tax Act, 1961 ?

We have heard Mr. Tilak Mitra, learned standing Counsel for the appellant and Mr. Pratyush Jhunjhunwala learned Advocate assisted by Mr. Mrigank Kejriwal, learned Advocate for the respondent/assessee.

The short question involved in the instant case is whether deduction claimed by the assessee in respect of the housing project under Section 80IB (10) of the Act was liable and whether the assessing officer was right in depriving the assessee from filing the deduction.

Aggrieved by the order passed by the assessing officer dated 4.3.2015 under Section 143(3) of the Act, the assessee preferred appeal before the Commissioner of Income Tax (Appeal) 9, Kolkata CIT(A) and by order dated 21st August 2015, the appeal was allowed. Challenging the same the revenue preferred the appeal before the Tribunal. The Tribunal after considering the entire facts has dismissed the appeal. This is why the revenue is before us by way of present appeal.

We find from the order of the Tribunal that identical deduction was claimed by the assessee in respect of the same project up to the stage which was concluded during the assessment year 2010-11. The assessing officer disallowed the deduction under Section 80IB of the Act. Ultimately the matter travelled up to the Tribunal and the claim for deduction under Section 80IB was allowed by the Tribunal vide order dated 22.1.2016 in I.T.A. No. 12/Kol/2014. The said order passed by the Tribunal in assessee's own case in respect of the same project for the assessment year 2010-11 had attained finality. Apart from that Tribunal has also noted the facts and circumstances of the case as well as the legal position and dismissed the appeal. We find that there is no perversity in the approach of the Tribunal and also find that no questions of law, much less substantial questions of law arises for consideration in this appeal.

Accordingly the appeal fails and dismissed.

The application GA/2/2018 stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

Pkd/GH