OD-30

ORDER SHEET
IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

IA NO: GA/1/2022, GA/2/2022
In
ITAT/7/2022
PRINCIPAL COMMISSIONER OF INCOME TAX 9, KOLKATA
Versus
MALA ROY

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 17^{th} May, 2022.

Mr. S. Roy Chowdhury, Advocate…for appellant.
Mr. S. M.Surana, Mr. Bhaskar Sengupta, Advocates…for the respondent.

RE: GA/1/2022
ITAT/7/2022

The Court : Heard learned counsel for the parties.

There is a delay of 678 days in filing the appeal. As we are inclined to dispose of the main appeal itself, we exercise discretion and condone the delay in filing the appeal. Accordingly, the application for condonation of delay being GA/1/2022 is allowed.

RE: ITAT/7/2022

This appeal filed under section 260A of the Income Tax Act, 1961 [the Act, in brevity] is directed against the order dated 31.12.2019 passed by the Income Tax Appellate Tribunal "C" Bench, Calcutta in ITA No.407[Kol] of 2018 for the assessment year 2012-13. The revenue has raised the following substantial question of law for consideration :

(i) *Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal "C" Bench, Kolkata failed to appreciate that the report of inquiry as submitted by Hon'ble Justice Shri Shah Commissioner is not a mere piece of information, the report itself is a judicial document as set up under section 3 of the Commissioner of Inquiry Act, 1952 is holding power of a civil court as envisaged in Section 4 of the said Commission of Inquiry Act, 1952?*

(ii) *Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal "C" Bench, Kolkata has erred in law to uphold the order of Commissioner of Income Tax (Appeal); the merits of the case which involves serious encroachment and default on the part of the assessee resulting in gross loss to Government Exchequer should have been taken into account?*

(iii) *Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal "C" Bench, Kolkata has erred in fact as well as law by placing complete reliance on the calculation put forth by the Commissioner of Income Tax (Appeal) whereas the assessing officer had specifically calculated the excess production. The same calculations were also presented before the Learned Income Tax Appellate Tribunal will all corroborative evidence. However Learned Income Tax Appellate Tribunal has only relied upon the order of Commissioner of Income Tax (Appeal)?*

Heard learned counsel for the parties.

Upon perusal of the order impugned in this appeal passed by the Tribunal, we find that the Tribunal has examined the factual position and concurred with the findings recorded by the Commissioner of Income Tax [Appeal]-20, Kolkata [CIT(A)] and affirmed the factual findings recorded by the CIT[A]. On perusal of the reasoning given by the Tribunal from paragraph 9 of the impugned order we fiind that the matter is entirely factual. The Tribunal has also recorded that the factual finding could not be controverted by the department before the Tribunal. Thus, we fiind no question of law much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal is dismissed. The application for stay being GA/2/2022 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

pkd/kb