OD-33&34

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

ITAT/164/2021
IA NO: GA/2/2021
PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-1, KOLKATA
VERSUS
M/S. THE PEERLESS GENERAL FINANCE AND INVESTMENT CO. LTD.

ITAT/164/2021
IA NO: GA/1/2021
PRINCIPAL COMMISSIONER OF INCOME TAX, KOLKATA-1, KOLKATA
VERSUS
M/S. THE PEERLESS GENERAL FINANCE AND INVESTMENT CO. LTD.

BEFORE :

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

Date : 11th April, 2022

Appearance :-
Mr. Soumen Bhattacharjee, Adv.
... For Appellant

Mr. Abhijit Chatterjee, Sr. Adv.
Mr. Gopal Ram Sharma, Adv.
... For Respondent

Re: IA No.GA/1/2021

The Court : We have heard Mr. Soumen Bhattacharjee, learned Standing Counsel appearing for the appellant/revenue and Mr. Abhijit Chatterjee, learned Senior Counsel appearing for the respondent/assessee.

There is a delay of 598 days in filing the appeal. The perusal of the relevant dates shows that the appellant/revenue would be entitled to the benefit of the order passed by the Hon'ble Supreme Court extending the period of limitation for filing of appeals under various enactments. For such reason, the delay in filing the appeal is condoned. The application for condonation of delay being IA No.GA/1/2021 is allowed.

Re: ITAT/164/2021

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 is directed against the order dated 5th December, 2019 passed by the Income Tax Appellate Tribunal, 'C' Bench, Kolkata in ITA No.1470/Kol/2019 for the assessment year 2015-16. The revenue has raised the following substantial questions of law for consideration :

i) Whether the Learned Tribunal has committed substantial error in law by holding that the Assessing Officer has not recorded satisfaction as required under law, prior to invoking Rule 8D of the Income Tax Rules, 1962 ignoring that the Assessing Officer has clearly mentioned his satisfaction at the second paragraph pertaining to discussion upon Section 14A in the assessment order?

ii) Whether the Learned Tribunal has erred in law and in facts in confirming the order of Learned CIT(A) in deleting the addition of Rs.29,09,680/- on sale of right of property and to allow carrying forward of the loss to the future year as per claim of the assessee regarding long term capital loss of Rs.36,60,000/-?

iii) Whether the Learned Tribunal has erred in law in confirming the order of Learned CIT(A) in allowing the deduction of Education Cess of Rs.95,23,489/- under Section 37(1) of the Act by holding that Education Cess does not part of tax and hence outside the ambit of Section 40(1)(ii) of the Income Tax Act which covers tax only ?

We have heard Mr. Soumen Bhattacharjee, learned Standing Counsel appearing for the appellant/revenue and Mr. Abhijit Chatterjee, learned Senior Counsel appearing for the respondent/assessee.

On perusal of the order passed by the Tribunal, we find that the Tribunal has taken note of the fact that the Assessing Officer had not recorded satisfaction before invoking Rule 8D of the Income Tax Rules. This appears to have been the position for the assessment year 2013-14 also. Therefore, the order passed by the Commissioner of Income Tax (Appeals)-1, Kolkata [CIT(A)] was confirmed. We find no grounds to interfere with the finding recorded by the Tribunal.

With regard to the second issue, namely, deleting the addition made on account of sale of rights in property and carrying forward of loss to the future years, the Tribunal followed the decision of the Hon'ble Supreme Court in the case of Radhasoami Satsang vs. CIT

(1992) 193 ITR 321 (SC). We find that there is no ground to interfere with the said finding.

With regard to the third issue regarding allowance or deduction of education cess under Section 37(1), the Tribunal has remanded the matter for consideration to the Assessing Officer after partly accepting the stand taken by the assessee. This finding also does not call for any interference.

For the above reasons, the appeal filed by the revenue is dismissed. Substantial questions of law are answered against the revenue.

With the dismissal of the appeal, the application for stay being IA No.GA/2/2021 also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/SN
AR(CR)