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

ITAT/60/2022
IA NO: GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX 5, KOLKATA
VS.
KOLKATA PORT TRUST

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : SEPTEMBER 5, 2022.

Appearance:
Mr. Soumen Bhattacharjee, Adv.
… for appellant
Mr. J.P. Khaitan, Sr. Adv.
Mr. Pranit Kr. Bag, Adv.
Mr. Snehashis Sen, Adv.
Mr. Abhishek Banerjee, Adv.
Mr. Aditya Sarkar, Adv.
….for respondent

GA/1/2022

The Court : We have heard Mr. Soumen Bhattacharjee, learned standing Counsel for the appellant and Mr. J.P. Khaitan, learned Senior Advocate duly assisted by Mr. Pranit Kr. Bag for the respondent.

There is a delay of 603 days in filing the appeal.

On perusal of the relevant dates we find that the appellant/revenue would be entitled to the order of the Hon'ble Supreme Court extending the period of limitation for filing the appeal under various statutes.

For such reason, the application is allowed and delay in filing the appeal is condoned.

ITAT/59/2022

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 21st February, 2022 passed by the Income Tax Appellate Tribunal "C" Bench (Tribunal) in I.T.A. No. 453/Kol/2018 for the assessment years 2014-15, C.O. No. 23/Kol/2019 for the assessment year 2014-15.

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

a) Whether on the facts and in the circumstances of the case and in law, the Learned Income Tax Appellate Tribunal erred in mechanically holding the notice for imposition of penalty as invalid, because of not striking off the "inaccurate particular of income" portion in the notice under section 274 of the Income Tax Act, 1961 for initiation of penalty proceeding U/s. 271(1)(c) ?

b) Whether on the facts and in the circumstances of the case and in law, the Learned Income Tax Appellate Tribunal erred in quashing the penalty order under section 271(1)(c) of the Income Tax Act, 1961, only because of not striking off the "inaccurate particular of income" portion in the notice under section 274 even when no prejudice has been caused to the assessee ?

The short issue involved in the instant case is whether penalty imposed by the assessing officer under Section 271(1)(c) of the Act was sustainable in law. The Commissioner of Income Tax (Appeals) 10, Kolkata [CIT(A)] vide order dated 28th December, 2017 set aside the penalty. On perusal of the order we find that the CIT(A) rightly took note of the legal position that merely because of an addition stands confirmed penalty under Section 271(1)(c) is not automatic. The CIT(A) examined the fact of the case and after taking note of the decision of the Supreme Court in

Pricewaterhousecoopers Pvt. Ltd. Vs. CIT, (2012) 348 ITR 306 (SC). On facts it is found that the assessee's aim to offer interest income on income tax refund was an inadvertent and bona fide error and no contumacious conduct has been established by the assessing officer. The revenue filed appeal before the Tribunal. The Tribunal after considering the correctness of the order passed by the CIT also found that notice issued by the assessing officer under Section 271(1)(c) of the Act was defective, inasmuch as the irrelevant portion of the notice has not been struck off. Therefore, the assessee did not have adequate opportunity to put forward their submission in response to the penalty notice. The learned Senior Counsel had referred to the decision of this Court in the case of *Principal CIT, Central - 2 Kolkata Vs. Brijendra Kumar Poddar, 2021(12) TMI 24- (CAL)* where the Court took into consideration the decision in the case of *CIT Vs. MANJUNATHA COTTON & GINNING FACTORY [2013] 359 ITR 565* and dismissed the appeal filed by the revenue. Thus we find that the correct legal position has not been noted by the CIT but the learned Tribunal as well.

Thus we find there is no substantial question arising for consideration in this appeal.

For such reason, the appeal fails and dismissed.

Consequently, the stay application also stands closed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

Pkd/GH