OD-6 & 7

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

IA No. GA 1 of 2017 (Old No. GA 3504 of 2017)
in
ITAT 339 of 2017

LABDHAN MERCHANTS PVT. LTD. & ANR.
VERSUS
INCOME TAX OFFICER, WARD 1(4), KOLKATA & ORS.

AND

IA No. GA 2 of 2017 (Old No. GA 3507 of 2017)
in
ITAT 339 of 2017

LABDHAN MERCHANTS PVT. LTD. & ANR.
VERSUS
INCOME TAX OFFICER, WARD 1(4), KOLKATA & ORS.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 4th February, 2022

Appearance:
*Mr.Subash Agarwal, Adv.*
*Mr. Pranit Bag, Adv.*
*...for the appellant.*

*Mr. P.K. Bhaumick, Adv.*
*Mr. Manabendra Bandopadhyay, Adv.*
*...for the respondent.*

Re.: IA No. GA 1 of 2017 (Old No. GA 3504 of 2017)

The Court : We have heard Mr. Subash Agarwal, learned counsel assisted by Mr. Pranit Bag, learned counsel appearing for the appellant/assessee and Mr. P.K. Bhaumick, learned counsel assisted by Mr. Manabendra Bandopadhyay, learned counsel appearing for the respondent/revenue.

There is a delay of 116 days in filing the instant appeal. We have perused the affidavit filed in support of the condone delay application and we find that the reasons given are acceptable and the appellant/assessee has shown sufficient cause for condonation of delay. Accordingly, the delay in filing the appeal is condoned.

The application being IA No. GA 1 of 2017 (Old No. GA 3504 of 2017) for condonation of delay is allowed.

Re.: ITAT No.339 of 2017

This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the Act, for brevity) is directed against the order dated 1st March, 2017 passed by the Income Tax Appellate Tribunal, 'D' Bench, Kolkata in ITA No. 725/Kol/2015 for the assessment year 2009-10. The assessee has raised the following substantial questions for consideration:

a) Whether the Learned Tribunal was justified in holding that the first proviso to Section 68 which has been inserted by the Finance Act, 2012 w.e.f.1.4.2013 applies to the Assessment Year:2009-10?

b) Whether on the facts and circumstances of the case, the Learned Tribunal is correct in holding that the alleged lack of proper enquiries as to the issue of share capital/premium in the course of proceedings under Section 147 is to be considered as erroneous and prejudicial to the interest of revenue even though the re-opening was done for the specific purpose of taxing the escapement of miscellaneous charges of Rs.11,000/-?

c) Whether on the facts and circumstances of the case, the Learned Tribunal is correct in not appreciating the fact that the reassessment order passed by the Assessing Officer is not erroneous as well as not prejudicial to the interest of the revenue on the issue of share capital/premium when no addition can be made under Section 68 of the Income Tax Act, 1961 in view of the judgments of the Hon'ble Supreme Court in the case of Lovely Exports (P) Ltd. Reported in 319 ITR (st.) 5 and other cases?

d) Whether on the facts and circumstances of the case, the Learned Tribunal is correct in holding that addition on account of share capital/premium can be made under Section 68 in the first year of incorporation/business?

e) Whether on the facts and circumstances of the case, the Learned Tribunal is correct in holding that the Commissioner of Income Tax under Section 263 can set aside the assessment order and direct the Assessing Officer to conduct a thorough enquiry, notwithstanding the jurisdiction of the Assessing Officer in making enquiries on the issues or matters as he considers fit in terms of Section 142(1) and 143(2) of the Act?

f) Whether the purported finding of the Learned Tribunal that the issue of share capital/share premium has not been properly looked into or investigated by the Assessing Officer is wholly perverse and/or is based on no material and/or is based on mere conjectures and surmises?

We have heard Mr. Subash Agarwal, learned counsel assisted by Mr. Pranit Bag, learned counsel appearing for the appellant/assessee and Mr. P.K. Bhaumick, learned counsel assisted by Mr.Manabendra Bandopadhyay, learned counsel appearing for the respondent/revenue.

It is fairly submitted by learned counsel appearing for the appellant/assessee that identical order which was impugned before us in this appeal was subject-matter of challenge before this Court by a similarly placed assessee raising the very same substantial questions of law and the said appeal was dismissed by this Court in the case of **Rajmandir Estates Private Limited –versus- Principal Commissioner of Income Tax** reported in **(2016) 386 ITR 162 (cal)**. It is further submitted that excepting the substantial question of law no.(a), which was left open, all other questions of law are decided against the assessee.

Thus, following the above decision, the appeal filed by the assessee is dismissed answering the substantial questions of law nos.(b) to (f) against the assessee and the substantial question no.(a) is left open.

The application being IA No. GA 2 of 2017 (Old No. GA 3507 of 2017) for stay also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.pal/pkd.