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

ITAT/75/2022
IA No.GA/1/2022; GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL-2, KOLKATA
VS.
JAYASHREE JAYAKAR MOHANKAR

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK
Date : 25th July, 2022

<u>*Appearance*</u> :
Mr. Tilak Mitra, Adv…for the appellant.

Mr. Pratyush Jhunjhunwalla, Mr. M. Kejriwal, Advs.…for respondent.

<u>RE: GA/1/2022</u>

The Court : There is a delay of 757 days in filing the appeal.

On perusal of the relevant dates we find that the appellant/revenue be entitled to the benefit of the order passed by the Hon'ble Supreme Court extending the period of limitation for preferring appeals under various statutes.

For such reason the application is allowed and the delay is condoned.

<u>ITAT/74/2022</u>

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act for brevity) is directed against the order dated 10.1.2020 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata (Tribunal) in ITA No.37/Kol/2018 for the assessment year 2005-06.

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

i) Whether on the facts and in the circumstances of the case, ITAT was erred in law in holding that the proceedings initiated u/s 148 of the Act for the year under consideration was barred by limitation, without properly considering provision of section 149[1][c] of the Income Tax Act, 1961 ?

ii) Whether on the facts and in the circumstances of the case, ITAT was erred in law in confirming the decision of Ld. CIT[A], wherein it was observed that as per Finance Act, 2012, section 149[1][c] of the Act was made effective prospectively from 01.07.2012 and there was nothing expressly provided by amending Act which indicated Legislative intent to make provision of section 149[1][c] applicable, to those proceedings which had become barred by limitation on 01.07.2012?

We have heard Mr. Tilak Mitra, learned standing Counsel for the appellant/revenue and Mr. Pratyush Jhunjhunwala, learned Advocate appearing for the respondent.

The short question falls for consideration is whether the proceeding initiated by the assessing officer under section 148 of the Act for the year under consideration, namely, AY 2005-06 is barred by limitation in terms of provision of section 149[1][c] of the Act. We have perused the order passed by the tribunal and we find that the tribunal rightly took note of the legal position and allowed the assessee's appeal. Aggrieved by the same, the revenue preferred the appeal before the learned tribunal. The tribunal before took note of the facts of the case took note of the various decisions, more particularly, the decision in the case of *BRAHM DATT VS. ASSISTANT COMMISSIONER OF INCOME TAX; REPORTED IN [2018] 100 TAXMANN.COM 324 [DELHI].* In the said decision it was held that the amendment of Section 149 of the Act by Finance Act, 2012, which extended limitation for reopening assessment to sixteen years could not be resorted for reopening proceedings concluded before amendment came into effect. Admittedly the amendment came into effect on 1st July, 2012 and the notice under Section 148 was issued on 19th August, 2013. The decision in *Brahm Datt (supra)* as well as other decisions were noted in the case of *SMT. N. ILLAMATHY VS. INCOME TAX OFFICER, WARD-11(2);*[2020] 120 taxmann.com 313 (Madras) . At this juncture it would be beneficial to extract the relevant paragraph of the said decision.

> "12. The next issue is as to whether the Assessing Officer, The CIT(A) and the Tribunal were right in holding that the period of limitation exceeded on the date of issuance of the notice under section 148 of the Act dated 22.12.2005 for assessment year 1997-98."

The Tribunal after taking note of the decision in *Brahm Datt (supra)* took into consideration of the facts of the assessee's case and found that notice for reopening the assessment issued on 19th August, 2013 in respect of the assessment year under consideration, Assessment year 2005-06 was time barred. The view taken by the learned Tribunal does not call for any interference for the above reason. Accordingly, the appeal filed by the revenue is dismissed.

The substantial questions of law are answered against the revenue. .

Application being GA/2/2022 stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

Pkd/GH