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

ITAT/77/2022
IA NO. GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX 9, KOLKATA
VS.
SHRI GOPAL CHANDRA MANNA

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE SUPRATIM BHATTACHARYA
Date : SEPTEMBER 26, 2022.

Appearance:
Mr. Soumen Bhattacharjee, Adv.
... for appellant

GA/1/2022

The Court :- We have heard Mr. Soumen Bhattacharjee, learned Counsel for the revenue.

Notice has been served and after a consideration period of time none appears for the respondent.

There is a delay of 118 days in filing the appeal. On perusal of the application we are satisfied that sufficient cause has been shown for not being able to prefer the appeal within the period of limitation. The application is allowed. The delay in filing the appeal is condoned.

ITAT/77/2022

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated September 8, 2022 passed by the Income

Tax Appellate Tribunal 'A' Bench Kolkata (Tribunal) in ITA No. 442/Kol/2022 for the assessment year 2015-2016. The revenue has raised the following substantial questions of law for consideration :

(i) Whether on the facts and circumstances of the case and the Learned Income Tax Appellate Tribunal erred both in law and facts of the case by canceling the order passed by the Learned Commissioner of Income Tax under section 263 of the Income Tax Act and in restoring the order of the Assessing Officer by holding that the Assessing Officer had taken a possible view at the relevant point of time ?

(ii) Whether on the facts and circumstances of the case and the Learned Income Tax Appellate Tribunal erred both in law and facts of the case by dismissing order under section 263 of the Act passed by the Principal Commissioner of Income Tax, where he had contended that no enquiry was made by the Assessing Officer during the course of assessment proceedings to ascertain whether any unaccounted purchase/expenses were actually made by the assessee in relation to undisclosed turnover, while calculating profit @8% of undisclosed turnover ?

(iii) Whether on the facts and circumstances of the case, the Learned Income Tax Appellate Tribunal "erred both in law and facts of the case while cancelling the order under section 263 of the Act passed by the Principal Commissioner of Income Tax, where he contended that there was clear error committed by the Assessing Officer and the same being prejudicial to the interest of the revenue ?

We have heard Mr. Soumen Bhattacharjee, learned Counsel for the revenue.

Notice has been served and after a consideration period of time none appears for the respondent.

Learned Tribunal had reversed the order passed by the Principal Commissioner of Income Tax, Kolkata 9 (PCIT) dated March 13, 2020 passed under Section 263 of the Act. We have perused the order passed by the learned Tribunal which has examined factual position and noted that the assessing officer had adopted one of the questions permissible in law. More so, when two views are possible the learned Tribunal took note of the decision in the case of *CIT Vs. Honda Siel Power Products Limited [2010]* 194 taxxmann 175 and allowed the appeal filed by the assessee. On perusal of the impugned order we find that factual matrix has been thoroughly gone into by the learned Tribunal and thereafter as finding has been rendered. It is found that the twin test which are to be fulfilled for assuming jurisdiction under Section 263 of the Act have not been fulfilled. Thus we find that there is no questions of law, much less substantial questions of law arising for consideration in this appeal.

Accordingly, appeal is dismissed.

(T.S. SIVAGNANAM, J.)

(SUPRATIM BHATTACHARYA, J.)

Pkd/GH