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ITAT/93/2022
IA No.GA/1/2022
IA No.GA/2/2022

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME
TAX, ASANSOL

-Versus-

BURDWAN DEVELOPMENT AUTHORITY

Appearance:
Mr. Prithu Dudheria, Adv.
...for the appellant.

Mr. Abhratosh Majumdar, Sr. Adv.
Mr. Pingal Bhattacharyya, Adv.
...for the respondent.

BEFORE:

The Hon'ble JUSTICE T.S. SIVAGNANAM

-And-

The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 1st August, 2022.

The Court : We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue and Mr. Abhratosh Majumdar, learned senior counsel assisted by Mr. Pingal Bhattacharyya, learned Advocate for the respondent/assessee.

There is a delay of 236 days in filing the appeal.

We have perused the affidavit filed in support of the application for condonation of delay and we find that sufficient cause has been shown for not being able to file the appeal within the time.

Accordingly, the application for condonation of delay (IA No.GA/1/2022) is allowed and the delay in filing the appeal is condoned.

This appeal filed by the revenue under Section 260A of the Income Tax Act, is directed against the order dated 17th March, 2021 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata in ITA No.1972/Kol/2014 for the assessment year 2006-07.

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

- "(i) Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal has erred in law in deleting income of the Assessee from sale of development right to the tune of Rs.4,90,52,168/- being not actually received in the relevant previous year. But the accrual took place on February 8, 2006 which was within the Financial Year 2005-06 ?*
- (ii) Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal erred in law in agreeing the Project Completion Method followed by the Assessee as the accrual of amount was due to the Assessee in the year under*

consideration, therefore, was rightly assessed by the Assessing Officer ?

We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue and Mr. Abhratosh Majumdar, learned senior counsel assisted by Mr. Pingal Bhattacharyya, learned Advocate for the respondent/assessee.

On perusal of the order passed by the tribunal we find that the tribunal has rightly taken note of the legal position and granted relief to the assessee. Apart from that, the tribunal has also noted the factual position and relevant details were called for. The assessing officer could not place anything on record to dispute the claim of the assessee of having not received the same during the year under consideration. In paragraph 7 of the order passed by the tribunal, the following factual finding has been recorded:

"During the course of appellate proceedings, the assessee, however, furnished the relevant details to show that the said amount was actually not received during the year under consideration and since the Assessing Officer could not rebut or controvert this assertion made by the assessee, the ld. CIT(Appeals) deleted the addition of Rs.4,90,52,168/- made by the Assessing Officer by holding that the said amount not received by the assessee during the year under consideration

could not brought to tax in the hands of the assessee in the year under consideration."

After noting the above factual position, the tribunal has observed that the learned departmental representative has brought out nothing on record to dispute the finding/observation arrived at by the Commissioner of Income Tax (Appeals). That apart, the tribunal also noted that the assessee has been following the Project Completion Method and another project namely, Poddar Project has been completed in the previous year relevant to the assessment year 2009-10 and the entire income from the said project actually accrued to the assessee in the assessment year 2009-10 and the same was accordingly recognised and offered to tax as could be seen from the assessment order dated 20th December, 2016. On perusal of the said assessment order the tribunal noted that the amount of Rs.50,00,000/- has already taxed in the hands of the assessee for the assessment year 2009-10 when the relevant projected was completed and the amount in question actually accrued to the assessee as income on the basis of Project Completion Method followed by it. Furthermore, the tribunal also re-examined the relevant clauses of the agreement entered into by the assessee with M/s. Dheeraj Promoters and also noted the various conditions imposed therein.

Thus, we find that there is no question of law much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal (ITAT/93/2022) fails and is dismissed.

Consequently, the connected application for stay (IA No.GA/2/2022) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)