OD-1

ITAT/408/2017
IA No.GA/1/2017 (Old No.GA/3784/2017)
IA No.GA/2/2017 (Old No.GA/3785/2017)

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

COMMISSIONER OF INCOME TAX
(EXEMPTION), KOLKATA

-Versus-

ST. JHON DIOCESAN GIRLS' HIGHER
SECONDARY SCHOOL

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

Mr. Bhaskar Sengupta, Adv.
...for the respondent.

BEFORE:
The Hon'ble JUSTICE T.S. SIVAGNANAM
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA

Date : 12th April, 2022.

The Court : We have heard Mr. Prithu Dudheria, learned standing counsel appearing for the appellant/revenue and Mr. Bhaskar Sengupta, learned Advocate appearing for the respondent/assessee.

There is a delay of 39 days in filing the appeal. We have perused the affidavit filed in support of the application for condonation of delay. We are satisfied with the reasons given therein. Accordingly, the delay in filing the appeal is condoned and the application for condonation of delay (IA No.GA/1/2017 (old No.GA/3784/2017) is allowed.

Re: ITAT/408/2017:

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed against the order dated 2nd June, 2017 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the 'Tribunal' in short) ITA No.1079/Kol/2013 for the assessment year 2009-10.

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

"a) *Whether on the facts and circumstances of the case and in law the said Tribunal erred in granting relief to the assessee u/s II (2) of the Income Tax Act, 1961, in a case of "Under application" of income and where the assessee failed to comply with the terms of section 11(2)of the Income Tax Act, 1961 in respect of its revised claim, before completion of assessment u/s. 143(3) of the Income Tax Act, 1961 ?*

b) Whether on the facts and circumstances of the case and in law the said Tribunal erred in not abiding by the decision of the Hon'ble Supreme Court in the case of CIT vs. Nagpur Hotel Owners' Association [247 ITR 201] where on similar set of facts it was held by the Apex Court that for availing benefit of Section 11(2) of the Income Tax Act, 1961, Form No.10 along with the resolution for set apart must be furnished before the assessing officer, prior to completion of assessment and not after completion of assessment ?

c) Whether on the facts and circumstances of the case and in law the said Tribunal was correct in upholding revised claim of exemption u/s. 11(2) of the Income Tax Act, 1961 made before the said Commissioner, over and above exemption allowed during assessment under the said section in accordance with the claim made in the Return by the assessee, disregarding the decision of the Hon'ble

Supreme Court of India in the case of Goetze India vs. CIT [284 ITR 323] ?"

We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue and Mr. Bhaskar Sengupta, learned Advocate for the respondent/assessee. Learned counsel for the appellant submitted that the tax effect involved in this appeal is Rs.37,08,509/-.

If that be so, the revenue cannot pursue this appeal on the ground of low tax effect. Accordingly, the appeal (ITAT/408/2017) stands dismissed on the ground of low tax effect. Consequently, the substantial questions of law suggested by the revenue are left open.

In the result, the connected application for stay IA No.GA/2/2017 (Old No.GA/3785/2017) also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/As.