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

ITAT/409/2017
IA NO:GA/1/2017 (OLD NO.GA/3786/2017)
GA/2/2017 (OLD NO.GA/3787/2017)
PRINCIPAL COMMISSIONER OF INCOME TAX – 2, KOLKATA
VS.
M/S. USHA MARTIN TELEMATICS LIMITED

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE BIVAS PATTANAYAK

Date : 21st July, 2022.

<u>*Appearance*</u> :-
Mr. Om Narayan Rai, Adv.
Mr. Prithu Dudhoria, Adv.
....for appellant.
Mr. Nilanjana Banerjee Pal, Adv.
.....for respondent

The Court : We have heard Mr. Om Narayan Rai and Mr. Prithu Dudhoria, learned standing Counsel appearing for the appellant and Mrs. Nilanjana Banerjee Pal, learned Advocate appearing for the respondent.

There is a delay of 366 days in filing the appeal. We have perused the affidavit filed in support of the condone delay petition and found reasons given therein are convincing and sufficient causes shown for not preferring the appeal within the time. Hence, the delay in filing the appeal is condoned. The application for condonation of delay is allowed.

ITAT/409/2017

This appeal filed under Section 260A of the Income Tax Act 1961 (the Act for brevity) is directed against the order dated April 26, 2016 passed by the Income Tax Appellate Tribunal "C" Bench, Kolkata in I.T.A. No. 2222/Kol/2014 for the assessment year 2010-2011. The revenue has suggested the following substantial question of law for consideration :

> "Whether in the facts and circumstances o the case learned Income Tax Appellate Tribunal has erred on facts as well as in law in holding that Commissioner of Income Tax does not show any firm reasons as required under section 263 of the Income Tax Act, 1961 to declare the assessment order erroneous and prejudicial to the interest of revenue?"

We have heard Mr. Om Narayan Rai and Mr. Prithu Dudhoria, learned standing Counsel appearing for the appellant and Mrs.

Nilanjana Banerjee Pal, learned Advocate appearing for the respondent.

The short question involved in the instant case is whether the Commissioner of Income Tax was right in invoking the jurisdiction under Section 263 of the Act. On perusal of the order passed by the Tribunal we find that the Tribunal has pointed out that the Commissioner of Income Tax has noted the written submission filed by the assessee and has also recorded that the case was heard in detail. However, no finding was rendered by the Commissioner to the effect that the assessment order is erroneous in so far as it is prejudicial to the interest of the revenue. The Tribunal also notes that the Commissioner has merely stated that the case requires reconsideration. In order to invoke the jurisdiction under Section 263 of the Act, the Commissioner is required to point out as to what error was committed by the assessing officer and in the absence of any such finding, it cannot be stated that the order passed by the assessing officer was erroneous and consequently it cannot be treated to be prejudicial to the interest of the revenue. The various factual details which were placed by the assessee in response to the show cause notice issued by the Commissioner were taken note of by the Tribunal and after discussing the facts, the appeal filed by the assessee was allowed. The Tribunal has also taken note of the various decisions of the High Courts. Thus, we find that the matter being entirely factual, no questions of law much less substantial questions of law arises for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

The stay application stands closed.

(T.S. SIVAGNANAM, J.)

(BIVAS PATTANAYAK, J.)

SN/GH
AR(CR)