OD-13

ITA/135/2012

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

SRI SUBHASH CHAND JAIN

-Versus-

COMMISSIONER OF INCOME TAX, XV, KOLKATA

Appearance:
Mr. Devanand Mishra, Adv.
Mr. Prashant Kumar Singh, Adv.
...for the appellant.

Mr. S. N. Dutta, Adv.
...for the respondent.

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

Date : 20th January, 2022.

The Court : This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the 'Act' in brevity) is directed challenging the order dated 22nd June, 2012 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the 'Tribunal' in short) in ITA/07/Kol/2011 for the assessment year 2005-06.

The appeal was admitted on 4th December, 2012 to decide the following substantial questions of law:

(i) *Whether on a true and proper interpretation of the provision of Section 194C of the Income Tax Act, 1961 prior to its amendment with effect from June 1, 2007 there was any obligation upon the assessee* *to deduct tax at source from payment of Rs.29,05,628/- made to 17 individuals towards labour charges ?*

(ii) *Whether the findings arrived at by the Tribunal that the 17 individuals to whom payments were made were sub-contractors and that the provisions of sub-Section (2) of Section 194C of the Income Tax Act, 1961 were applicable are perverse ?*

(iii) *Whether and in any event, on a true and proper interpretation of the provisions of Section 49(a)(ia) of the Income Tax Act, 1961 as in force for the assessment year 2005-06, the said section was applicable only in respect of amounts remaining payable at the end of the previous year and no disallowance could be made in respect of amounts paid during the previous year, even if no tax was deducted at source ?*

The above appeal was listed before us yesterday (19th January, 2022). Since none appeared for the appellant, we had requested the learned counsel who were available during the hearing to inform the counsel who had appeared for the appellant at the time of admission.

Today Mr. D. N. Mishra, learned counsel has appeared before us and submitted that Mr. V. N. Mishra, advocate was appearing in the matter and his client has instructed them to return all the cause papers which were returned to the appellant who has acknowledged the same on 31st July, 2021 to the said effect, copy of the letter addressed by the counsel for the appellant to the appellant has been produced before us which is placed on record.

We have heard Mr. S. N. Dutta learned counsel for the respondent. Since the appellant has not made any arrangement after taking back the cause papers, we are left with no option but to dismiss the appeal (ITA/135/2012) for non-prosecution.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das