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

ITAT/91/2015
IA No:GA/1/2015 (Old No.:GA/1986/2015)
GA/2/2015 (Old No.GA/1987/2015)

COMMISSIONER OF INCOME TAX, KOLKATA-8, KOLKATA
VERSUS
SYAMAL KUMAR PANDEY

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 10th May, 2022.

Appearance:-
Mr. Prithu Dudheria, Adv.
...for Appellant

Mr. Sanjoy Bhowmick, Adv.
... for Respondent

Re: IA No.GA/1/2015 (Old No.GA/1986/2015)

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

There is a delay of 343 days in filing the present appeal by the revenue. We are satisfied with the reasons given in the affidavit filed in support of the condone delay petition. Accordingly, the delay in filing the appeal is condoned and the application for condonation of delay is allowed.

Re:ITAT/91/2015:

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act for brevity) is directed against the order dated 13th February, 2014 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata in I.T.A. Nos.1644 & 1645/Kol/2011 for the assessment years 2006-07 and 2007-08.

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

i) Whether on the facts and circumstances of the case, the Learned Income Tax Appelate Tribunal erred in law in deleting the revision order passed under Section 263 of the Income Tax Act, 1961 ?

ii) Whether on the facts and circumstances of the case, the Learned Tribunal failed to appreciate that distinctive feature and attributes of the STTL Everest system Phaco Emulsification Machine is computed for the purpose of depreciation or its is medical instrument ?"

We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue and Mr. Sanjoy Bhowmick, learned Advocate appearing for the respondent/assessee.

The assessing officer completed the assessment under Section 147 read with Section 143(3) of the Act for the assessment year 2006-07 and under Section 143(3) of the Act for the assessment year 2007-08. The correctness of the claim of depreciation made by the assessee on sophisticated professional equipment namely, STL Everest System, Phaco –

Emulsification machine purchased from M/s. Alcon Laboratories (India) Pvt. Ltd. on 13th June, 2005. After examining the certificate issued by the supplier stating that the machine was completely computerised, the assessing officer allowed the depreciation of 60% on the said machine. The commissioner of Income Tax, Kolkata-XX (CIT) invoked his power under Section 263 of the Act and by order dated 21st September, 2011 held the assessment order to be erroneous in so far as it is prejudicial to the interest of the revenue. The assessee challenged the said order before the tribunal. The tribunal examined the core issue as to whether the finding rendered by the assessing officer was wholly erroneous in so far as it is prejudicial to the interest of the revenue. The tribunal held in favour of the assessee by holding that the assessing officer took more reasonable and plausible view basing upon the evidence and the voracity of which cannot be substituted by taking another view in the matter purely by speculation and surmise. The tribunal, in our view, rightly noted the decision of the Hon'ble Supreme Court in the case of C.I.T. vs. Greenworld Corporation reported in (2009) 314 ITR 81 (SC) wherein it was held that if the assessing officer adopts one of the possible courses available in the scheme of Income Tax which results in any loss of revenue or where two views are possible and the assessing officer adopted one of the two courses available in law, CIT cannot invoke his power under

Section 263 of the Act on the ground that the assessment order is prejudicial to the interest of revenue.

Furthermore, learned tribunal also noted that the decision of the Hon'ble Supreme Court in Malabar Industrial Co. Ltd. vs. CIT reported in (2000) 243 ITR 83 (SC) and allowed the appeal filed by the assessee. We find that the tribunal rightly took note of the factual position as well as the legal position and granted relief to the assessee. Thus, we find no ground to interfere with the said order. Accordingly, the appeal filed by the revenue (ITAT/91/2015) is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the connected application for stay (IA No.GA/2/2015 (Old No.1987/2015) also stands closed.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

GH/S.Nath/As.