OD-18

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

ITAT/159/2022
IA No.: GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX, SILIGURI
VS.
M/S. MILLENIUM COCRETE CREATION PVT. LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 31st October, 2022

Appearance :
Mr. Prithu Dudhoria, Adv.
... for appellant
Mr. Subash Agarwal, Adv.
...for respondent

The Court : We have heard Mr. Prithu Dudhoria, learned standing Counsel appearing for the appellant/revenue and Mr. Subash Agarwal, learned Counsel appearing for the respondent/assessee.

There is a delay of 568 days in filing the appeal. We have perused the affidavit filed in support of the petition and we find sufficient cause has been shown for not being able to prefer the appeal within the period of limitation. Accordingly, the delay is condoned and the application being GA/1/2022 is allowed.

ITAT/159/2022

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 19th August, 2020, passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata, in I.T.A. No. 1820/Kol/2019 for the assessment year 2012-13.

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 quashing the penalty imposed upon the Assessee for not striking of the incapable portion of the notice issued under section 274 of the Income Tax Act, 1961 read with section 271(1)(c) of the Income Tax Act, 1961 ?

ii) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in quashing the penalty imposed by the Assessing Officer and confirmed by the CIT (Appeals) on the ground of defective notice is perverse particularly when the assessee never participated during the Assessment Proceeding and also never appeared before the CIT (Appeals) ?

We have heard Mr. Prithu Dudhoria, learned standing Counsel appearing for the appellant/revenue and Mr. Subash Agarwal, learned Counsel appearing for the respondent/assessee.

The short issue which falls for consideration in the instant case is whether the order passed by the learned Tribunal allowing the appeal filed by the respondent/assessee and setting aside the order of penalty imposed on the assessee under section 271(1)(c) of the Act was justified.

We find from the impugned order that the learned Tribunal has examined the factual position and found the notice issued to the respondent/assessee to be defective. If that be the undisputed factual position, it goes to the root of the matter and the imposition of penalty was unjustified. The learned Tribunal took note of the decision of this Court in the case of Pr. CIT vs. Dr. Murari Mohan Koley in ITAT No.306 of 2017, dated 18.7.2018, wherein the Court had followed the decision of the High Court of Karnataka in the case of CIT vs. Manjunatha Cotton and Ginning Factory, (2013) 359 ITR 565, wherein the Court held that imposition of penalty under section 271(1(c) of the Act is bad in law and invalid for the reason that the show cause notice issued under section 274 of the Act does not specify the charge against the assessee as to whether it is for concealment of particulars of income or furnishing of inaccurate particulars of income.

Mr. Agarwal placed reliance on the decision of the High Court of Judicature at Madras in the case of Shri Babuji Jacob vs. The Income Tax Officer, Non Corporate Ward 1(2), Chennai in TCA No.39 of 2019, wherein an identical view was taken.

Thus, we find that the learned Tribunal rightly allowed the appeal filed by the assessee and granted leave and the said order does not call for any interference.

Accordingly, the appeal is dismissed and substantial questions of law are answered against the revenue.

The stay application being GA/2/2022 also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/SN