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

ITAT/182/2022
IA NO. GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX –2, KOLKATA
Versus
M/s. SUDARSHAN PAPER & BOARD PRIVATE LIMITED

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Dated : DECEMBER 05, 2022.

Appearance:
Mr. Soumen Bhattacharjee, Adv.
...for appellant
Mr. S.M. Surana, Adv.
...for respondent

GA/1/2022

The Court :- Heard learned Counsel for the respective parties.

There is a delay of 903 days in filing the appeal.

Though we are not fully satisfied with the reasons assigned in the affidavit filed in support of the petition for condonation of delay, yet keeping in mind that this is an appeal under Section 260A of the Act, we are required to examine as to whether there is the substantial questions of law arising for consideration. Only for such reason we exercise discretion and condone the delay in filing the appeal. The application stands allowed.

ITAT/182/2022

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961, challenging the order dated 23rd October, 2019 passed by the Income Tax

Appellate Tribunal "A" Bench Kolkata in ITA 130 (Kol) of 2018 for the assessment year 2011-12.

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

i) Whether on the facts and circumstances of the case and in law the Learned Income Tax Appellate Tribunal is justified in upholding the order of the Learned Commissioner of Income Tax (Appeal), quashing the order of the Assessing Officer under section 147/144 of the Income Tax Act, 1961 for non-issuance of notice under section 143(2) of the Act, without appreciating the facts that assessee did not comply with the notice under section 148 of the Income Tax Act, 1961 and as such notice under section 143(2) of the Income Tax Act, 1961 is not required in assessee's case ?

On perusal of the order passed by the learned Tribunal we find the legal issue involved in the instant case has been rightly dealt with by the learned Tribunal affirming the order passed by the Commissioner of Income Tax (Appeals) and quashing the reassessment proceeding for want of notice under Section 143(2) of the Act. In this regard usual reference may be made to the decision of the High Court of Madras in *M/s. Sapthagiri Finance & Investments –vs- The Income Tax Officer* TC(A) No. 159 of 2006 dated 17.07.2012. In the said decision after taking note of the decision of the Hon'ble Supreme Court in *Asstt. CIT v. Hotel Blue Moon ; [2010] 321 ITR 362(SC)* the reassessment proceeding was set aside. The initial view was that failure to issue notice is an irregularity, which is curable when subsequently the law is well settled that it being an inherent defect is not curable. To the same effect are the decisions in *Principal Commissioner of Income Tax-vs-Jai Shiv Shankar Traders Pvt. Ltd.* 383 ITR 448 (Delhi) and *Tiwari Kanhaiya Lal –vs- Commissioner of Income-Tax* 154 ITR 109 (Raj).

In the light of the above, the order passed by the learned Tribunal is legal and valid and does not call for any interference.

Accordingly, the appeal filed by the revenue is dismissed and the substantial question of law is answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.