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

ITAT/187/2022
IA No.GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX-KOLKATA-2
VS.
M/S. COAL INDIA LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 13th December, 2022

Appearance :
Ms. Smita Das De, Adv.
....for appellant

Mr. Pranit Bag, Adv.
Mr. S.K. Singhi, Adv.
Ms. Riti Basu, Adv.
Mr. Sayan Banerjee, Adv.
...for respondent

The Court : We have heard Ms. Smita Das De, learned standing Counsel appearing for the appellant/revenue and Mr. Pranit Bag, learned Counsel for the respondent/assessee.

There is a delay of 595 days in filing the appeal. Affidavit-in-opposition has been filed and the learned counsel appearing for the respondent would strenuously oppose the delay on the ground that there is absolutely no explanation offered for the inordinate delay. Though we are partially agree with the learned counsel for respondent, we are considering an appeal under Section 260A of the Income Tax Act, 1961 and we are required to see as to whether any substantial question of law arises for consideration. Considering this factor we are inclined to exercise discretion in favour of the appellant/revenue and condone the delay. The application for condonation of delay (IA No.GA/1/2022) is allowed.

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This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 29th May, 2020 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata (Tribunal) in ITA No. 638/Kol/2017 for the assessment year 2008-09.

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

i) Whether the Learned Tribunal has committed substantial error in law in holding the second notice under section 148 of the Income Tax Act, 1961 as invalid and consequential action which culminated in assessment order dated 29.03.2014 as null and void without disposing the return filed pursuant to first re-opening?

ii) Whether the Learned Tribunal has committed substantial error in law in quashing the proceeding in pursuance to the second re-opening notice under Section 148 of the Income Tax Act, 1961 without completing the reassessment after issuance of the first re-opening notice under Section 148 of the Act even though re-opening of case multiple times are allowable under the Income Tax Act provides the reasons of re-opening are based on different sets of facts?

iii) Whether the Learned Tribunal has committed substantial error in law by not appreciating that the first notice under Section 148 of the Income Tax Act was issued on 05.08.2011 and assessment under Section 147/143(3) was completed on 25.03.2013 and the second notice was issued on 19.03.2013 and order under Section 147/143(3) was completed on 29.03.2014 and therefore returns filed in response of both the notices under Section 148 were duly been considered and assessment were made?

We have heard Ms. Smita Das De, learned standing Counsel appearing for the appellant/revenue and Mr. Pranit Bag, learned Counsel for the respondent/assessee.

The short issue which arises for consideration in the instant appeal is whether the Assessing Officer could have issued a second notice under Section 148 of the Act when the assessee had filed his return of income in response to the first notice issued under Section 148A and such return was not disposed of. This question of law has been answered in several decisions and one of the earliest decisions is in the case of *S. Raman Chettiar vs. CIT* reported in (1961) 42 ITR 700, wherein the Court held that when a return is furnished by the assessee in consequence of a notice issued under Section 34 of the Income Tax Act, 1922, it was not open to the Income Tax Officer to ignore that return and issue a further notice under Section 34(1)(a) on the assumption that there had been an omission or failure on the part of the assessee to make return of his income. This decision was affirmed by the Hon'ble Supreme Court in the Commissioner of Income Tax, Madras vs. S. Raman Chettiar, (1965) 55 ITR 630.

There is also a decision of the High Court of Allahabad to the same effect in the case of *Commercial Art Press vs. Commissioner of Income Tax,* reported in (1978) 115 ITR 876. The aforementioned decisions were followed in the case of *A.S.S.P. & Co. vs. CIT* reported in 1986 SCC OnLine Mad 317. Further, a leaned Single Bench of this Court has decided an identical issue in the case of *The Indian Tube Co. Ltd. vs. Income Tax Officer,* reported in 2004 SCC OnLine Cal 362. The underlying legal principle is that, when a notice under Section 148 of the Act is issued, the original assessment proceedings are entirely opened up or left open and the finality which had occurred in the first assessment order does not exist any longer. Therefore, without disposing of the return of income filed by the assessee in response to the first notice, the assessing officer could not have issued a second notice for reopening of the assessment which, at the relevant point of time, did not exist in the eye of law.

The learned senior standing counsel appearing for the appellant/revenue contended that such contention was not raised by the assessee at the earliest point of time, that is, before the Assessing Officer. The issue being a question of law, it would be well open to the assessee or any aggrieved person to raise the same in a proceedings, especially before an appellate forum, which the assessee had done.

Thus, for the above reasons, we find that the learned Tribunal had rightly affirmed the order passed by the Commissioner of Income Tax (Appeals) and dismissed the appeal filed by the revenue.

For the above reasons, we find no grounds to interfere with the order passed by the learned Tribunal. Accordingly, the appeal filed by the revenue

(ITAT/187/2022) fails and is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the connected application for stay (IA No.GA/2/2022) is also dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/A.S.