OD-37

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

ITAT/191/2022
IA No.GA/1/2022; GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX, -1, KOLKATA
Vs
M/S. SHRI GANESH CEMENT PVT. LTD.

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

Appearance :
Ms. Smita Das De, Adv.
Mr. Prithu Dudhoria, Adv.
..for appellant
Mr. J.P. Khaitan, Sr. Adv.
Ms. Swapna Das, Adv.
Mr. Siddhertha Das, Adv.
Mr. Souvik Chandra, Adv.
...for respondent

GA/1/2022

The Court:- Heard Ms. Smita Das De, Mr. Prithu Dudhoria, learned Advocates for the appellant and Mr. J.P. Khaitan, Sr. Advocate duly Ms. Swapna Das, Mr. Siddhertha Das and Mr. Souvik Chandra, Advocates for the respondent.

There is a delay of 394 days in filing the appeal. We find that substantial period of the time was during the period of lockdown and, therefor, we exercise discretion and condone the delay in filing the appeal. The application, therefore, stands allowed and the delay in filing the appeal is condoned.

ITAT/191/2022

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act), directed against the order dated 25th February, 2021 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA 2466/Kol/2018 for the assessment years 2012-2013.

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

(i) Whether explanation offered by the assessee in respect share application for the sum of Rs.50,30,00,000/- was satisfactory as per section 68 of the said Act to the extent of the genuineness of transaction, creditworthiness of the company, nature and source of such sum so credited to the assessee's account or not ?

Heard Ms. Smita Das De, Mr. Prithu Dudhoria, learned Advocates for the appellant and Mr. J.P. Khaitan, Sr. Advocate duly Ms. Swapna Das, Mr. Siddhertha Das and Mr. Souvik Chandra, Advocates for the respondent.

We have carefully perused the material placed on record and considered the submissions made on either side. The preliminary objection raised by the Senior Counsel for revenue there is no substantial question of law arising for consideration in this appeal to examine the correctness of the said submission we have gone through the order passed by the learned Tribunal which had affirmed the order passed by the Commissioner of Income Tax (Appeal) - 5 dated 31st August, 2018 wherein the Tribunal has accepted the assessee's stand that the transaction done by the them were genuine and there was absolutely no justification on the part of the assessing officer to make the impugned addition. On going through learned Tribunal we find the Tribunal had reexamined the factual position while affirming the order passed by the CITA. Furthermore, the Tribunal records that the revenue has not controverted finding of fact and there was nothing on record to show that the findings recorded by the CITA to be perverse. Furthermore, the learned Tribunal also examined the remand report which was called for by the CITA which clearly shows that observations made by the assessing officer that share applicants were bogus was factually incorrect.

Thus we find there is no question of law, much less substantial question of law arising for consideration in this appeal.

Accordingly, the appeal stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.