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

ITAT/203/2022
IA NO. GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX - 9 KOLKATA
Versus
SMT. RANJANA SHARMA

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Dated : NOVEMBER 15, 2022.

Appearance:
Mr. Prithu Dudheria, Adv.
…for appellant

GA/1/2022

The Court :- We have heard Mr. Prithu Dudheria, learned standing Counsel for the appellant. Notice has been sent to the respondent has returned with the postal endorsement "left without instruction". However, since we are inclined to consider as to whether any substantial question of law arises for consideration in this appeal we decided to exercise our discretion and condone the delay in filing the appeal.

Accordingly, the application is allowed and the delay in filing the appeal is condoned.

ITAT/203/2022

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order passed by the Income Tax Appellate Tribunal "A" Bench Kolkata dated 19th February, 2020 in ITA No. 1157/Kol/2018 for the assessment year 2013-14. The revenue has raised the following substantial questions of law for consideration:-

i. Whether the assessee is entitled to get the benefit under section 54F of the said Act or not ?

ii. Whether the learned Appellate Tribunal was justified in setting aside the order passed by the learned commissioner of Income Tax or not ?

We have heard Mr. Prithu Dudheria, learned standing Counsel for the appellant.

The short question which is involved in the instant case is whether the assumption of jurisdiction of the Principal Commissioner of Income Tax – 11, Kolkata [PCIT] under section 263[1] of the Act was justified and within the jurisdiction. The learned Tribunal has examined the factual position and after taking note the celebrated decision in the case of *Malabar Industrial Co. Ltd. vs. Commissioner of Income Tax [2000] 243 ITR 83 [SC]* and the decision in *Commissioner of Income Tax vs. Max India [2007] 295 ITR 282 [SC]* allowed the assessee's appeal. That apart, the Tribunal has recorded that the department did not dispute the relevant details forming part of the case records, more particularly that the deed of conveyance was registered on 3.8.2011 and the agreement to sell along with possession on 15.6.2012. Noting this fact the learned Tribunal held that the assessing officer had rightly accepted the assessee's claim under section 54F of the Act. That apart, the learned Tribunal on facts found that the twin conditions which are to co-exists simultaneously before assumption of jurisdiction under section 263 of the Act were not fulfilled.

Thus, we find there is no question of law arises for consideration in this appeal. Hence, the appeal is dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH