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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/43/2023
IA NO. GA/1/2023,GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL KOLKATA-2
VS.
M/s. MAJESTIC COMMERCIAL PVT. LTD.

BEFORE :
THE HON'BLE T.S. SIVAGNANAM ACTING CHIEF JUSTICE
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 1st May, 2023.

Appearance :
Mr. Om Narayan Rai, Adv.
Mr. Soumen Bhattacharjee, Adv.
…for appellant

The Court:- Heard learned Counsel on either side.

It appears there is a delay of 803 days in filing this appeal. Though the respondent had been served and affidavit-of-service had been filed, none appears for the respondent. Though the reasons set out in the affidavit filed in support of the condone delay petition are not very convincing, however, on perusal of the supplementary affidavit we find that certain reasons have been assigned for not able to prefer the appeal within the time permitted. That apart the substantial questions of law, which have been raised by the revenue was considered by the Hon'ble Supreme Court in a recent decision in Principal Commissioner of Income Tax, Central-3 vs. Abhisar Buildwell [P] Ltd. reported in [2023] 149 taxmann.com 399 [SC]. The operative portion of the judgement is as follows :-

"14. In view of the above and for the reasons stated above, it is concluded as under:

i] that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;

ii] all pending assessments/reassessments shall stand abated;

iii] in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

iv] in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

The question involved in the present set of appeals and review petition is answered accordingly in terms of the above and the appeals and review petition preferred by the Revenue are hereby dismissed. No costs."

Thus the appeal stands disposed of in terms of the order passed by the Hon'ble Supreme Court in the aforementioned decision and the questions of law are answered accordingly.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE)

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.