OD – 4

ITAT/51/2023
IA No.GA/1/2023
GA/2/2023

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction (Income Tax)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF
INCOME TAX, KOLKATA-2

-Versus-

WEST BENGAL INFRASTRUCTURE
DEVELOPMENT FINANCE CORPORATION
LIMITED

BEFORE :
THE HON'BLE ACTING CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 31st March, 2023

Appearance :
Mr. Om Narayan Rai, Adv.
Mr. Prithu Dudhoria, Adv.
...for the appellant

Mr. J. P. Khaitan, Sr. Adv.
...for the respondent.

The Court : There is a delay of 65 days in filing the appeal.

We have heard Mr. Om Narayan Rai, learned standing counsel for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel for the respondent/assessee and perused the affidavit filed in support of the application for condonation of delay and we find sufficient cause has been shown for not preferring the appeal within the period of limitation.

Accordingly, the application for condonation of delay (IA No.GA/1/2023) is allowed and the delay of 65 days in filing the appeal is condoned.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated July 13, 2022 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in ITA No.564/Kol/2020 for the assessment year 2008-09.

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

(a) *Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, 'B' Bench Kolkata erred in law in not appreciating the fact of applicability of the Section 147 regarding income escaping assessment of the Income Tax Act, 1961 and quashed the re-opening of assessment ?*

(b) *Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal, 'B' Bench Kolkata erred in law in deleting the adjustment made in the account of disallowances under Section 14A of the Income Tax Act, 1961 ?*

We have heard Mr. Om Narayan Rai, learned standing counsel assisted by Mr. Prithu Dudhoria, learned advocate for the appellant/revenue and Mr. J.P. Khaitan, learned senior counsel for the respondent/assessee.

The first question to be considered is whether the reopening of the assessment under Section 147 of the Act was valid. The learned Tribunal had noted the detailed explanation given by the assessee for the reasons for reopening and noting the said explanation the learned Tribunal had examined the facts of the case and had recorded the following factual finding :

> *"...The ld. Assessing Officer raised all relevant queries about disallowance u/s 14A. He applied his mind and thereafter taken a view. This was again agitated before the higher appellate forum and the ld. CIT (Appeals) called for fresh information from the assessee and changed the ultimate quantum of disallowance made by the ld. Assessing Officer. It means that both the authorities have actively applied their mind on the issue. On reading of the reasons, we are unable to understand what is the fresh information possessed by the Revenue for forming the belief that income has escaped assessment. To our mind, there is no such information. The informations were already possessed by the Revenue and those were scrutinized."*

The revenue could not dislodged the above factual finding recorded by the Tribunal which has been done after examining the facts of the case.

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

Accordingly, the appeal (ITAT/51/2023) fails and is dismissed.

Consequently, the connected application for stay (IA No.GA/2/2023) also stands closed.

(T.S. SIVAGNANAM)
ACTING CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

As./S.Pal