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

ITAT/66/2023
IA NO.GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-1, KOLKATA
VS.
M/S. GURU NANAK EDUCATIONAL TRUST

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 22nd March, 2023

<u>Appearance</u> :
Mr. Tilak Mitra, Adv.
....for appellant
Mr. J.P. Khaitan, Sr. Adv.
Ms. Swapna Das, Adv.
Mr. Siddhertha Das, Adv.
...for respondent.

The Court : - We have heard Mr. Tilak Mitra, learned standing counsel appearing for the appellant and Mr. J.P. Khaitan, learned Senior Advocate duly assisted by Ms. Swapna Das and Mr. Siddhertha Das, Advocates on behalf of the respondent.

There is a delay of 168 days in filing the appeal.

We have perused the affidavit filed in support of the petition and we find sufficient cause has been shown for not preferring the appeal within the period of limitation. Hence the application is allowed and the delay in filing the appeal is condoned.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961, is directed against an order dated 20.03.2022 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata in I.T(SS).A Nos. 19 to 24/Kol/2020 and I.T. (SS)A Nos. 13 to 18/Kol/2020 both relating to Assessment years 2008-2009, 2009-2010, 2011-2012, 2012-2013 and 2013-2014.

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

i) WHETHER the Learned Tribunal has erred in law in deleting the additions made in the Assessment Year 2008-2009 to Assessment Year 2009-2010 and Assessment Year 2011-2012 to Assessment Year 2013-2014 on account of unexplained investments made under section 69 of the Act on the basis of District Valuation Officer's valuation report?

The Tribunal in the impugned order has followed the decision in the case of *PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-1, KOLKATA-Vs- M/S. NARULA EDUCATIONAL TRUST* in I.T(SS)A No. 42 to 47/Kol/2020 for the Assessment Years 2008-2009 to 2013-2014 dated 5.2.2021. Against the said decision the revenue preferred appeal before this Court in ITAT/35/2023 which was dismissed by judgment dated 27.2.2023, the operative portion of which reads as follows:-

"We have heard Mr. Smarajit Roychowdhury, learned standing counsel appearing for the appellant and Mr. J.P. Khaitan, learned senior counsel for the respondent.

Though the order passed by the learned Tribunal is an elaborate order, the legal issue involved in the case lies in a very narrow compass. The issue was as to whether the addition made by the Assessing Officer in all the assessment years based on the initial valuation report submitted by the Valuation Officer pursuant to a reference made by the DDIT(Investigation), dated 11th July, 2014, was within jurisdiction.

The learned Tribunal, in our view, rightly took note of the decision of the Hon'ble Supreme Court in Smt. Amiya Bala Paul Vs. CIT 262 ITR 407 (SC) and held that the DDIT did not have the power to make the reference to the DVO, which power he acquired only on 1st April, 2017 by virtue of the

Finance Act, 2017 under Section 132(9B) of the Act. Further, the learned Tribunal noted that neither the DVO filed the valuation report pursuant to the Assessing Officer's reference dated 22nd January, 2016 nor the DVO filed the valuation report pursuant to the reference by the CIT(A) through the Assessing Officer by letter dated 29th January, 2019.

Thus, the learned Tribunal noted that the addition has been made only on the basis of the initial valuation report dated 18th November, 2014, which was pursuant to the DDIT's reference and on the said date he had no power to call for such report."

In the light of the above settled legal position no ground has been made out by the appellant to interfere with the order passed by the learned Tribunal and the appeal is dismissed and the substantial question of law is answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH