O-107

ITA/65/2012

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION (Income Tax)
ORIGINAL SIDE

COMMISSIONER OF INCOME TAX,
KOLKATA-IV, KOLKATA

-Versus-

SMIFS CAPITAL MARKETS LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 20th February, 2023

Appearance :
Mr. Tilak Mittra, Adv.
...for the respondent..

The Court : 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 25th November, 2011 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA No.1554/Kol/2010 for the assessment year 2003-04.

The appeal was admitted on 18th June, 2012 on the following substantial question of law:

> *"Whether on the facts and in the circumstances of the case the Learned Tribunal has erred in law in upholding the order of the CIT (appeals) deleting the*

penalty levied by the Assessing Officer under Section 271(1)(c) of the I.T. Act, 1961 for the reason of not voluntary mentioning by the assessee in its original return the profits of Rs.4,21,33,856/- as Short Term Capital Gain by selling the "building" in question and for not offering the said income to tax till the same was detected and notice was issued under Section 148 of the I.T.Act, 1961 ?"

We have heard Mr. Soumen Bhattacharyya, learned standing counsel appearing for the appellant/revenue.

The issue involved in the instant case is whether the learned Tribunal was right in affirming the order passed by the Commissioner of Income Tax (Appeals), Central-I, Kolkata dated 11th May, 2010 deleting the penalty imposed by the Assessing Officer under Section 271(1)(c) of the Act.

On perusal of the order passed by the CIT(A), we find that the only controversy was with regard to the omission of addition of deemed capital gain of sale of fixed asset in computation of total income under the heading 'capital gain' after deducting the same the head 'business income.' The CIT(A) noted that the revenue does not dispute the fact that all relevant facts material to computation of total income were duly furnished by the assessee and no deficiency in furnishing of the facts had been pointed out by the Assessing Officer. Therefore, it was held that the deeming provision under Section 271(1)(c) would not stand attracted. With this reasoning the penalty was deleted. The revenue carried the matter on appeal before the Tribunal. The Tribunal re-examined the factual position and, in our view, rightly took note of the decision of the Hon'ble Supreme Court in *CIT vs. Reliance Petrochemicals (P) Ltd.* reported in (2010) 322 ITR 158 (SC) and held that the revenue has not been able to bring the case of the assessee under any one of the three contingencies which would be available for the purpose of levying the penalty under Section 271(1)(c) of the Act.

Thus, in the absence of any error in the order of the Tribunal or in the decision making process, we find no ground to interfere with the order passed by the Tribunal.

Accordingly, the appeal filed by the revenue (ITA/65/2012) is dismissed and the substantial question of law is answered against the revenue.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/As.