OD–4

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

ITA/53/2013
COMMISSIONER OF INCOME TAX CENTRAL- III KOLKATA - 7
VS.
SHRI ANIL KUMAR PATWARI

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

<u>Appearance</u> :
Mr. Soumen Bhattacharjee, Adv.
...for appellant

The Court : - This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 9th August, 2012 passed by the Learned Income Tax Appellate Tribunal "C" Bench, Kolkata in I.T.A. No. 1638/KOL/2011 relating to the Assessment Year 2007-2008.

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

i) Whether on the facts and in the circumstances of the case the Learned Tribunal is justified in dismissing the departmental appeal by directing to treat the seized cash as payment towards advance tax where Section 132B(1) expressly regulates the mechanism of calculation and imposition of interest. Income Tax Act does not provide for adjustment of seized cash before determination of Tax liability ?

ii) Whether on the facts and in the circumstances of the case the Learned Tribunal is justified in ignoring CBDT's Instruction No. 11/2006 dated 1st December, 2006 which is binding on the Assessing Officer and allowing

Assessee's appeal without proper appreciation of the materials, brought on record by the Assessing Officer in this regard?

We have heard Mr. Soumen Bhattacharjee, learned standing Counsel for the appellant.

As rightly pointed out by the learned standing counsel for the appellant that the tax effect as mentioned in the assessment order 5.6.2009 is Rs.38.72,064/- which is less than the threshold limit of Rs. 1 crore and, therefore, the revenue cannot pursue this appeal.

Accordingly, the appeal stands disposed of on the ground of low tax effect.

The substantial question of law, which has been admitted, is left open

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.