

OD - 7

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITAT/139/2023
IA NO.GA/1/2023, GA/2/2023

PRINCIPAL COMMISSIONER OF
INCOME TAX-1, KOLKATA

-Versus-

M/S. SPPL PROPERTY MANAGEMENT
PVT. LTD.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE AJAY KUMAR GUPTA
Date : 26th June, 2023

Appearance :
Mr.Prithu Dudheria, Adv.
for the appellant.

Mr.Pratyush Jhunjhunwala, Adv.
..for the respondent.

The Court : We have heard Mr.Prithu Dudheria, learned standing counsel appearing for the appellant/revenue and Mr. Pratyush Jhunjhunwala, learned counsel appearing for the respondent/assessee.

There is a delay of 129 days in filing the appeal. We have perused the affidavit in support of the petition and we find that sufficient cause has been shown by the appellant in not preferring the appeal within the period of limitation. Accordingly, the delay in filing the appeal is condoned. Hence, the application (GA/1/2023) stands disposed of.

This appeal has been filed under Section 260A of the Income Tax Act, 1961 (the Act) by the revenue challenging an order dated September 7, 2022 passed by the Income Tax Appellate Tribunal, C-Bench, Kolkata in ITA No.1051/Kol/2017 relating to assessment year 2012-13.

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 has erred in law in deleting the addition amounting to Rs.3,08,43,285/- without considering that the CBDT had not notified the said “Salarpuria Soft Zone” Project under required Rule 18C(4) of the Income Tax Rules, 1964?”

“(b) WHETHER on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in deleting the addition amounting to Rs.3,08,43,285/- without considering the occupancy certified in respect of “Salarpuria Soft Zone” was issued after expiry of the period of March 2007 as prescribed in the letter of approval of the DIPP, Ministry of Commerce and Industry, Government of India violating the provisions of Section 80IA(4)(iii) of the Income Tax Act, 1961?”

After we have elaborately heard the learned advocates for the parties and perused the materials placed on record as well as the order impugned before this Court, we find that the order passed by the Tribunal was virtually a consent order. The assessee had stated before the Tribunal that the order passed by the Principal Commissioner of Income Tax – 1, Kolkata (PCIT) passed under Section 263 of the Act may be modified to the extent that the assessee will not be eligible for deduction under Section 80IA(4)(iii) of the Act on the project, namely, Salarpuria Touch Stone.

However, the assessee is eligible for deduction under the very same provision in respect of the Salarpuria Soft Zone. The other grounds which were raised were not pressed. The revenue also did not oppose the said submission. Consequently, the appeal stood disposed of by modifying the order of the PCIT to the extent indicated above. That apart, we find, on facts, that the Tribunal had examined the correctness of the stand taken by the assessee when the matter was being heard by the Tribunal and after recording the concession granted by the appellant, relief has been granted. Thus, we find that no question of law much less substantial question of law is arising for consideration more particularly when the revenue does not state that it did not object to the order of the PCIT being modified by the learned Tribunal.

Hence, the appeal stands dismissed. Consequently, the application (GA/2/2023) stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(AJAY KUMAR GUPTA, J.)