OD – 10

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

ORIGINAL SIDE

ITAT/144/2023
IA NO.GA/1/2023

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-2, KOLKATA

-Versus-

EVERSIGHT TRADECOMM PVT. LTD.

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE AJAY KUMAR GUPTA
Date : 28th June, 2023

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

Mr.Anil Kumar Dugar, Adv.
...for the respondent.

The Court : This appeal has been filed under Section 260A of the Income Tax Act, 1961 (the Act) by the revenue challenging an order dated January 19, 2023 passed by the Income Tax Appellate Tribunal, B-Bench, Kolkata in ITA No.587 to 589/Kol/2022 relating to assessment years 2008-09, 2009-10 and 2014-15.

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

> *"Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal erred in law as well as in facts by cancelling the penalty of Rs.2,33,74,126/-, Rs.2,50,04,932/- and Rs.56,08,350/- for the Assessment Year 2008-09, 2009-10 and 2014-15 respectively levied under Section 271(1)(c) of the Act, 1961 without appreciating the fact that in the assessment orders all dated March 31, 2016 the Assessing Officer had specified in very clear terms that the penalty proceedings under Section 271(1)(c) of the Act, 1961 is initiated for concealed particulars of and had also clearly specified the particular condition for which penalty proceedings was initiated with the arrow symbol in the notice under Section 274 read with Section 271(1)(c) of the Act dated March 31, 2016 for each assessment years separately?"*

We have heard Mr. Tilak Mitra along with Mr.Prithu Dudheria, learned standing counsel appearing for the appellant/revenue and Mr. Anil Kumar Dugar, learned counsel appearing for the respondent/assessee.

The Commissioner of Income Tax (Appeals) – 21, Kolkata [CIT(A)] by order dated 31st August, 2022 deleted the penalty imposed on the assessee under Section 271(1)(c) of the Act on the ground that the show cause notice issued was defective. The learned Tribunal after reappreciating the facts of the case and after going through the show cause notice which admittedly was left blank as the relevant portions of the show cause notice were not struck off, applied the decisions of this Court as well as the Hon'ble Supreme Court and held that the imposition of penalty was illegal. The reason given by the learned Tribunal is perfectly valid and does not call for any interference.

Hence, the appeal fails and is dismissed. The substantial question of law is answered against the appellant/revenue. Consequently, the connected application stands closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(AJAY KUMAR GUPTA, J.)

S.Das/