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

ITAT/156/2022
IA NO: GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL-2, KOLKATA
VS.
M/S. SALARPURIA PROPERTIES PVT. LTD.

BEFORE :

THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 24th July, 2023

Appearance :
Ms. Smita Das De, Adv.
...for appellant

Mr. J.P. Khaitan, Sr. Adv.
Mr. Indranil Banerjee, Adv.
Mr. S.K. Debnath, Adv.
... for respondent

The Court :- This appeal has been filed by the revenue under Section 260A of the Income Tax Act (the Act) challenging the order passed by the Income Tax Appellate Tribunal, `A' Bench, Kolkata, in ITA No. IT(SS)A No. 57/Kol/2019, 67/Kol/2019, CO No. 45/Kol/2019, for the assessment year 2016-17.

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

a) Whether in the facts and the circumstances of the case the Tribunal was justified in law to delete the addition to the tune of Rs. 3,15,88,923/- made by the Assessing Officer under Section 14A read with Rule 8D(2) of the said Act by holding that no addition can be made under Section 153A/143(3) of the said Act ?

b) Whether in the facts and the circumstances of the case the Tribunal was justified in law in deleting the disallowances of the amount of sundry balances and stock written off to the tune of Rs. 66,259/- under Section 37(1) of the said Act ?

We have heard Ms. Smita Das De, learned standing counsel appearing for the appellant/revenue and Mr. J.P. Khaitan, learned senior Advocate appearing for the respondent/assessee.

There is a delay of 252 days in filing the appeal. We have perused the affidavit filed in respect of the condone delay petition and we find sufficient cause has been shown for not preferring the appeal within the period of limitation. Accordingly, the condone delay petition is allowed and the delay in filing the appeal is condoned.

The first issue is whether the learned Tribunal rightly deleted the addition made by the Assessing Officer under Section 14A read with Rule 8D(2). In this regard we have perused the findings recorded by the Commissioner of Income Tax (Appeals) [CIT(A)] as well as the finding recorded by the learned Tribunal. The learned Tribunal has made a fact finding exercise and ascertained from the audited balance sheet that the assessee has not earned any exempt income. The learned Tribunal applied the law laid down by the Hon'ble Supreme Court in (2018) 402 ITR 640 (SC) and upheld the decision of the CIT(A). Thus, we find that the learned Tribunal rightly re-appreciated the facts and applied the correct legal position and granted relief to the assessee and there are no grounds made out to interfere with the said finding.

The second substantial question of law is with regard to deleting the disallowances of the amount of sundry balances and stock written off to the tune of Rs.66,259/-, the learned Tribunal after hearing the parties and perusing the details on record noted that the sundry balances and stock written off by the assessee including unserviceable stock which were apparently arising in normal course of business or pertaining to amounts receivable and therefore it was held that the assessee is entitled to charge the same against the profits during the year in terms of the decision of the Hon'ble Supreme Court in 323 ITR 397 (SC). Thus, we find that the learned Tribunal rightly took note of the facts in issue as well as the law on the point and granted relief to the assessee and no grounds have been made to interfere with the said finding.

Accordingly, the appeal filed by the revenue is dismissed and the substantial questions of law are answered against the revenue.

The stay application GA/2/2023 is also dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

Pkd/SN/S.Das.