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IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
ORIGINAL SIDE

ITAT/167/2023
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 THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 30TH August, 2023

<u>Appearance</u> :
Mr. Tilak Mitra, Adv.
...for apellant
Mr. J.P. Khaitan, Sr. Adv.
Mr. Akhilesh Gupta, Adv.
Mr. Indranil Banerjee, Adv.
....for respondent

The Court : - We have heard Mr. Tilak Mitra, learned standing Counsel for the appellant/revenue and Mr. J P Khaitan, learned Senior Advocate duly assisted by Mr. Akhilesh Gupta, learned Advocate for the respondent/assessee.

There is a delay of 181 days in filing the appeal.

We have perused the affidavit filed in support of the condone delay petition and we find sufficient cause has been shown for not preferring the appeal within the period of limitation and, accordingly, the application is allowed. The delay in filing the appeal is condoned.

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 3rd August, 2022 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata in ITA/130/Kol/2021 for the assessment year 2010-11. The revenue has raised the following substantial questions of law for consideration :

"I) Whether the Learned Tribunal has erred in law and in fact in allowing the appeal of the Assessee in respect of the action taken under Section 263 of the Act, despite the fact that the AO passed the assessment order for assessment year 2010-11, 2011-12, 2012-13 and 2013-14 on the same date in which the assessee claim of deduction u/s. 80IB was allowed in the Assessment year 2010-11 but disallowed in Assessment year 2011-12, 2012-13, 2013-14 ?

II) Whether the Learned Tribunal has erred in law and in fact in overlooking that the Assessing Officer did not apply his mind in the assessment year 2010-11 which makes the order erroneous and prejudicial to the interest of the revenue ?"

The assessment for the year under consideration for AY 2010-11 under section 148(3) of the Act were completed on 26.3.2013. Subsequently, a search was conducted and post search the order under Section 153(1) was passed on 31.12.2017. This order was subject matter of challenge before the Tribunal by the assessee in ITA/2094/Kol/2017, ITA SSA No. 42/Kol/2019. The Tribunal by a common order dated 10.5.2022 allowed the assessee's appeal and set aside the order passed under Section 153A of the Act. Prior to the same, the Principal Commissioner of Income Tax (Central), Kolkata 2 (PCIT) issued notice under Section 263 of the Act dated 16.03.2020 proposed to refuse assessment of post search order passed under Section 153A of the Act dated 31.12.2017. The learned Tribunal on considering the facts and circumstances of the case and also taking note of the decision of the Hon'ble Supreme Court in *Malabar Industries,* reported in 243 ITR 83(SC) and in particular, taking note of the order passed by the learned Tribunal dated 10.05.2021 dismissed the appeal filed by the revenue. In our view, the learned Tribunal was perfectly justified in dismissing the appeal as the order which was sought to be refused by the PCIT in exercise of its powers under Section 263 of the Act was no longer in existence as the same had been quashed by the Tribunal by order dated 10.05.2022. Further, we note that as against the order passed by the learned Tribunal dated 10.05.2022 the revenue had preferred the appeal before this Court in ITAT 157 of 2023 which was dismissed by judgment dated 2.8.2023.

In the light of the above, we are of the view that the learned Tribunal was right in dismissing the appeal filed by the revenue.

In the result, the appeal is dismissed and the substantial questions of law are answered against the revenue.

Consequently, the applications stand closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH