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

ITAT/156/2022
IA NO: GA/1/2022, GA/2/2022

PRINCIPAL COMMISSIONER OF INCOME TAX 2, KOLKATA
VS.
M/s. EVERSAFE SECURITIES PVT. LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 2nd January, 2023

Appearance :
Mr. Tilak Mitra, Adv.
…for appellant.
Mr. Avratosh Mazumder, Sr. Adv.
Mr. Avra Mazumder, Adv.
..for respondent

The Court : - We have heard Mr. Tilak Mitra, learned standing counsel for the appellant and Mr. Avratosh Mazumder, learned Senior Advocate for the respondent assessee.

There is a delay of 244 days in filing the appeal. We have perused the affidavit filed in support of the petitioner and found sufficient cause has been shown for not preferring the appeal within the period of limitation. Hence, the petition is allowed. Delay in filing the appeal is condoned.

This appeal by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 30th April, 2021 passed by the Income Tax Appellate Tribunal, A Bench in ITA/604/KOL/2020 for the assessment year 2012-13. The revenue has raised the following substantial questions of law for consideration:-

i) Whether on the facts and circumstances of the instant case and in law the Learned Income Tax Appellate Tribunal has grossly erred in law in deciding on new additional grounds as points of law raised for the first time, without recording reasons and without passing a speaking order to admit new additional grounds which is in violation of Rule 46A of the I.T. Rule 1962 ?

ii) Whether on the facts and circumstances of the instant case and in law the Learned Income Tax Appellate Tribunal has erred in holding that the otice under section 143(2) of the Act issued by the Assessing Officer as non-est, while the issuing assessing officer, had jurisdiction over the assessee at the time of issuance of notice under section 143(2) of the Income Tax Act, 1961 ?

We have heard Mr. Tilak Mitra, learned standing counsel for the appellant and Mr. Avratosh Mazumder, learned Senior Advocate for the respondent assessee.

The short issue which falls for consideration before the learned Tribunal was whether the assessment order passed under Section 143(3) of the Act dated 14.03.2015 by the Income Tax Officer, ward V (3), Calcutta is bad in law without a notice under Section 143(2) of the Act was not issued by the jurisdictional assessing officer. It is not in dispute that the notice was not issued by the jurisdictional assessing officer. However, the revenue in appeal is before us contending that such a ground was never canvassed by the assessee before the Commissioner of Income Tax (Appeals) when they challenged the assessment order dated 14.03.2015 and raised such an issue for the first time before the learned Tribunal. The settled legal position is that there can be no estoppel against law. Furthermore, the issue which has been raised before the learned Tribunal is a jurisdictional issue which goes to the root of the matter.

Therefore, the learned Tribunal had rightly taken note of the legal position and held the assessment to be bad in law. Thus we find there is no substantial questions of law arising for consideration in this appeal.

Consequently, the appeal fails and dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.