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IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/213/2023
IA NO: GA/1/2023, GA/2/2023
COMMISSIONER OF INCOME TAX EXEMPTIONS KOLKATA
VS
INDIAN EX SERVICES LEAGUE WEST BENGAL

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 29TH September, 2023

Appearance :
Mr.Amit Sharma, Adv.
Mr. Soumen Bhattacharjee, Adv.
...for appellant.
Mr. Prabir Bhowmik, Adv.
Mr. Asok Bhowmik, Adv.
Mr. Bharat Ch. Simai, Adv.
...for respondent.

The Court : - We have heard Mr. Soumen Bhattacharjee, learned Advocate appearing for the appellant and Mr. Prabir Bhowmik, learned Advocate appearing for the respondent.

There is a delay of 133 days in filing the appeal.

On perusal of the averments set out in the application we find sufficient cause has been shown for not preferring the appeal within the period of limitation. Hence, the application is allowed and the delay in filing the appeal is condoned.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 24.11.2022 passed by the Income Tax Appellate Tribunal, Kolkata "A" Bench (the Tribunal) in ITA No. 398/Kol/2021 for the assessment year 2018-19.

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

A. Whether the Learned Tribunal has committed substantial error in law in allowing the appeal of the assessee despite the non-furnishing of Audit Report in Form 10B through electronic mode without any basis?

B. Whether the Learned Tribunal has committed substantial error in law by allowing exemption as claimed in the ITR filed for the Assessment Year 2018-19 by the assessee despite the fact that there was a delay in filing Form 10B of the Act?

C. Whether the Learned Tribunal has committed substantial error in law has in allowing the appeal of the assessee by holding that CIT(A) has power to condone a belated application in form 10B without appreciating the fact that the condonation of delay can only be granted by Commissioner of Income Tax/Principal Chief Commissioner of Income Tax/CBDT, as per the conditions laid down in Circular No. 2/2020 dated 03.01.2020 and also in the absence of any application for condonation of delay by the assessee, suo motu condonation cannot be granted?

After we have elaborately heard learned Counsel appearing on either side we find that the learned Tribunal after considering the facts and circumstances of the case and that the respondent being an Indian Ex Services Leave and that Form 10B was not filed within the stipulated time, but was filed before the Commissioner of Income Tax (Appeals) before the appeal could be heard and disposed of.

Thus, the learned Tribunal took note of the clarification issued by the Board that CBDT Circular No. 2/2020, which empowers the Commissioner of Income Tax to admit the belated application and held that the assessee is neither negligent nor a willful defaulter in filing the Form 10B within the stipulated time prescribed under law and it is occurred due to bona fide mistake on the part of the assessee.

Thus, we find that the learned Tribunal had taken an equitable view in the matter having regard to the peculiar facts and circumstances of the case and we find no question of law much less any substantial question of law arising out for consideration in this appeal. Accordingly, the appeal fails and dismissed.

Consequently, the applications stand closed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH