OD-8

ITA/247/2009
IA No.GA/1/2009 (Old No.GA/2451/2009)

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

COMMISSIONER OF INCOME TAX,
KOLKATA-X

-Versus-

ASHISH LAL GUPTA

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 9th February, 2023

Appearance :
Mr. Soumen Bhattacharyya, Adv.
...for the appellant.

The Court : This appeal filed by the revenue is time barred. There is a delay of 246 days in filing the appeal.

Since we are inclined to consider as to whether any substantial question of law arises for consideration in this appeal, though the respondent has not been served, we exercise discretion and condone the delay.

Accordingly, the application for condonation of delay (IA No.GA/1/2009) is allowed and the delay of 246 days in filing the appeal is condoned.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the 'Act' for brevity) is directed against the order dated 30th June, 2008 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA Nos.486 & 487/Kol/2018 for the assessment years 2003-04 and 2004-05.

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

(i) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified in law in cancelling he order of the Commissioner of Income Tax for invoking Section 263 of the Income Tax act and allowing the assessee's appeal without appreciating the points of law involved ?

We have heard Mr. Soumen Bhattacharyya, learned standing counsel for the appellant/revenue.

The short issue which falls for consideration is whether the order passed by the learned Tribunal setting aside the order passed by the Commissioner of Income Tax under Section 263 of the Act was justified.

On going through the facts as noted by the learned Tribunal, we find that the CIT did not spell out as to what other evidence was required to be filed by the assessing officer in spite of the assessing officer having made detailed enquiries on more than seven occasions in which the assessee had submitted all documents and materials. Furthermore, the learned Tribunal found that the power Section 263 of the Act has been invoked only based on the assessment records and there was no new material brought on record by the CIT.

Thus, we find that the matter revolves entirely on facts and the Tribunal rightly interfered with the order passed under Section 263 of the Act.

Thus, we find there is no substantial question of law arising for consideration in this appeal. Accordingly, appeal (ITA/247/2009) filed by the revenue fails and is dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./K.Banerjee