OD-8

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

ITAT 222 OF 2023
IA NO: GA/1/2023, GA/2/2023
PRINCIPAL COMMISSIONER OF INCOME TAX 1, KOLKATA
-Versus-
M/S. THE PEERLESS GENERAL FINANCE AND INVESTMENT CO. LTD.

BEFORE:
The Hon'ble T.S. SIVAGNANAM, CHIEF JUSTICE
-And-
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 17th November, 2023

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

Mr. J.P. Khaitan, Sr. Adv.
Mr. Akhilesh Gupta, Adv.
Mr. Pranav Sharma, Adv.
…for the respondent

The Court : This appeal filed by the revenue is time barred and there is a delay of 846 days in filing the appeal.

We have heard Ms. Smita Das De, learned standing Counsel appearing for the appellant and Mr. J.P. Khaitan, learned senior Counsel appearing for the respondent.

We find reasonable explanation has been given by the Department for not preferring the appeal within time. Therefore, considering the facts and circumstances we exercise discretion and condone the delay in filing the appeal. The application IA No: GA/1/2023 is allowed.

This appeal by the revenue is directed against the order dated 3rd December, 2020 passed by the Income Tax Appellate Tribunal, “A” Bench, Kolkata (Tribunal) in ITA No. 1005/Kol/2019 for the assessment year 2008-09.

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

i) Whether in the facts and the circumstances of the case the Tribunal was justified in law to uphold the order of the CIT(A) holding inter alia that reopening of assessment on the basis of audit objection was not sustainable in law despite the fact that Assessing Officer has reason to believe that income chargeable to tax has escaped income for the relevant Assessment Year ?

ii) Whether in the facts and the circumstances of the case the Tribunal was justified in law to uphold the order of the CIT(A) on the ground that reopening of assessment order section 147 of the said Act as without issuing a notice under Section 143(2) since the assessee did not file any return in response to Notice under Section 148 of the Act despite well settled proposition of law that mere non-issuance of a Notice under Section 143(2) of the Act will not vitiate and/or make the reassessment null and void in the eye of law although notice under Section 143(1) was duly issued along with questionnaire ?

We have heard Ms. Smita Das De, learned standing Counsel appearing for the appellant and Mr. J.P. Khaitan, learned senior Counsel appearing for the respondent.

After we have carefully gone through the order passed by the learned Tribunal which affirmed the order passed by the Commissioner of Income Tax (Appeals), we find the learned Tribunal on facts was satisfied that the Assessing Officer while initiating the reassessment proceedings beyond four years from the end of the relevant assessment year did not record reasons prior to issuance of the notice that there was any failure on the part of the assessee to truly and fully disclose all materials. In this appeal such factual finding cannot be substituted.

Consequently, we find no substantial questions of law arising for consideration in this appeal. The appeal is thus dismissed.

The stay application IA No : GA/2/2023 is also dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

SN.
AR(CR)