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

ITAT/198/2022
IA No: GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX -5, KOLKATA
VS.
M/S. KABRA BROTHERS

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 30th January, 2023

Appearance :
Mr. Tilak Mitra, Adv.
....for appellant.

Mr. Ejaz Khan, Adv.
Mr. Pradip Kumar De, Adv.
Ms. Ananya Adhikary, Adv.
...for the respondent.

The Court : We have heard Mr. Tilak Mitra, learned standing counsel appearing for the appellant and Mr. Ejaz Khan, learned advocate for the respondent.

There is a delay of 601 days in filing the appeal. On perusal of the affidavit filed in support of the petition, we find that though plausible explanation has not been given by the department for condonation of the delay, yet considering the fact that the present appeal is one under Section 260A of the Income Tax Act, 1961 whereunder we are required to see as to whether any substantial question of law arises for consideration, we exercise discretion and condone the delay in filing the appeal. Accordingly, the application being IA No.GA/1/2022 is allowed.

ITAT/198/2022

This appeal by the Revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 8th July, 2020 passed by the Income Tax Appellate Tribunal, 'A' Bench, Kolkata in ITA No.2022/Kol/2017 for the assessment year 2012-13. The revenue has raised the following substantial questions of law for consideration :

a) Whether the Learned Income Tax Appellate Tribunal erred in law in deleting the disallowance of Rs. 19,40,92,375/- made by the Assessing Officer who held such amount of assessee's claim of purchase was non-genuine or bogus claim, based upon the information from Sales Tax Department and on the result of his own verification ?

b) Whether the Learned Income Tax Appellate Tribunal erred in law in deleting the disallowance of Rs. 23,09,699/- being the proportionate freight charges related to the bogus claim of purchases disallowed by the assessing officer, who held it as claim of fake transportation charges ?

c) Whether the Learned Income Tax Appellate Tribunal erred in law in deleting disallowance made on account of bogus claim of transportation and freight charges even when the transportation and freight charges were paid to allegedly non existing parties as such, not a genuine transaction at all and the order impugned is perverse ?

We have heard Mr. Tilak Mitra, learned standing counsel appearing for the appellant and Mr. Ejaz Khan, learned advocate for the respondent.

The issue which falls for consideration in the instant case is whether the learned Tribunal was right in deleting the additions made by the Assessing Officer on the ground that the purchases effected by the assessee were bogus.

The learned Tribunal notes that the basic premise on which the addition was made is based upon the findings of the Sales Tax authorities. Before the Tribunal the assessee had placed the order passed by the West Bengal Commercial Taxes Appellate and Revisional Board in Revision (VAT) Case No.1610 of 2016-17, dated 28th February, 2017, by which order partial relief was granted to the assessee. Upon perusal of the order the Tribunal noted that it is not the case of the Sales Tax department that the purchases and consequent sales were bogus in nature. Furthermore, before the Tribunal the assessee had filed a paper book containing the details of suppliers by giving data, date-wise, track-wise, challan wise etc. along with copies of purchases and sales ledgers. Furthermore, the Tribunal notes that the parties are registered with the VAT authorities and payments have been made through cheque and the revenue have no evidence whatsoever to support its conclusion that the purchases were bogus.

Thus, we find that there is no question of law, much less substantial questions of law, arising for consideration in this appeal. Accordingly, the appeal fails and is dismissed.

The stay application being GA/2/2022 accordingly also stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

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