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ITAT/212/2022
IA No.GA/1/2022
GA/2/2022

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

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA

-Versus-

M/S. TIBUTE TRADING AND FINANCE LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 6th February, 2023

Appearance :
Mr. Prithu Dudheria, Adv.
...for the appellant.

Ms. Tanvi Luhariwala, Adv.
Mr. Rites Goel, Adv.
Mr. Kailash Dhanuka, Adv.
...for the respondent.

The Court : We have heard Mr. Prithu Dudheria, learned standing counsel for the appellant/revenue and Ms. Tanvi Luhariwala, assisted by Mr. Rites Goes and Mr. Kailash Dhanuka, learned Advocates for the respondent/assessee.

There is a delay of 945 days in filing the appeal. We have perused the affidavit filed in support of the application for condonation of delay. Though there is no proper explanation for delay, since this appeal has been filed under Section 260A of the Income Tax Act, 1961, we are inclined to consider as to whether any substantial question of law arises for consideration in this appeal. Hence, we exercise discretion and condone the delay of 945 days in preferring the appeal.

Accordingly, the application for condonation of delay (IA No.GA/1/2022) 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' for brevity) is directed against the order dated 28th August, 2019 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA No.1506/Kol/2019 for the assessment year 2015-16.

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

(i) *Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in dismissing the appeal of the revenue on the Ground of Tax Effect, in view of the CBDT Circular No.3 of 2018 dated 11.07.2018 and CBDT Circular No.23 of 2019 F. No.279/MISC/m-93/2018-ITJ(Pt.), dated 06.09.2019, has clarified that appeals may be filed on merits as an exception to said*

> *circular revised monetary limits, so mentioned in Circular No.17/2019 is applicable to all pending appeals. As per these circulars all the revenue appeals filed before the ITAT, having tax effect of less thatn Rs.50,00,000/- have to be treated as withdrawn, without going into the merits of the case ?*

We have heard Mr. Prithu Dudheria, learned counsel for the appellant and Ms. Tanvi Luhariwala, learned advocate for the respondent/assessee.

The learned Tribunal by the impugned order dismissed the appeal filed by the revenue on the ground that it is below the monetary limit fixed by the CBDT for filing appeals by the revenue. The contention of the revenue before us is by placing reliance upon a Circular No.23 of 2019 dated 6th September, 2019. The said circular would not be of any assistance to the case of the revenue as the appeal filed before the Tribunal was dismissed on the ground of low tax effect by order dated 28th August, 2019. On the said date, the Circular which was in vogue is dated 20th August, 2019 which had reiterated that the earlier Circular No.17 of 2019 dated 20th August, 2019 relaxing/revising the monetary limit for filing appeal before the Tribunal to Rs.50 lakhs would be applicable to all pending appeals before various forums.

Thus, the learned Tribunal took note of this aspect and dismissed the appeal and we find that there is no ground to interfere with the order passed by the learned Tribunal.

Accordingly, the appeal filed by the revenue (ITAT/212/2022) is dismissed and the substantial question of law is answered against the revenue.

Consequently, the connected application for stay (IA No.GA/2/2022) also stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

A/s./S.Das