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

ITAT/230/2022
IA No. GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX-1, KOLKATA
VS.
M/S. EIH LTD.

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 14th March, 2023

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

Mr. Asim Choudhury, Adv.
Mr. Soham Sen, Adv.
...for the respondent.

The Court : 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 22nd November, 2018 passed by the Income Tax Appellate Tribunal 'B' Bench, Kolkata (Tribunal) in ITA No.1992/Kol/2017 for the assessment year 2011-12.

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

A. Whether the Learned Tribunal has committed substantial error in law by upholding the decision of CIT(A) wherein the CIT(A) was of the view that the amended provision under Section 271AA of the Income Tax Act cannot be applied in the case of the assessee when it is noticed that section 271AA of the Act contains law procedure and the amendment shall therefore be applicable to all pending proceedings as on the date of amendment?

We have heard Mr. Soumen Bhattacharjee, learned standing counsel for the appellant and Mr. Asim Choudhury, learned counsel for the respondent.

The short issue which falls for consideration in this appeal is as to whether penalty could have been imposed under Section 271AA as it stood amended by the Finance Act, 2012 with effect from 01.07.2012. Admittedly, the assessment year under consideration is 2011-12. The Tribunal took note of the said fact and held in favour of the assessee by assigning the following reason:-

> "*5. A perusal of the penalty order passed by the Assessing Officer in the present case shows that the penalty under section 271AA was imposed by the Assessing Officer in the case of the assessee for A.Y. 2011-12 for the failure of the assessee to report the intentional transactions and also to furnish incorrect information in the return of income with reference to such international transactions. The said defaults allegedly committed by the assessee for the year under consideration, i.e. A.Y. 2011-12, however, were not covered by the provisions of section 271AA as applicable to the said year and the same were covered only by the provisions of section 271AA as amended by the Finance Act, 2012 w.e.f. 01.07.2012. Since the said provisions as amended by the Finance Act, 2012 w.e.f. 01.07.2012 were not retrospective in nature and were applicable from A.Y. 2012-13, we find ourselves in agreement with the ld. CIT (Appeals) that the penalty imposed by the Assessing Officer by relying on the amended provisions of section 271AA was not sustainable. We accordingly uphold the impugned order of the ld. CIT (Appeals) cancelling the penalty imposed by the Assessing Officer under section 271AA and dismiss this appeal of the Revenue.*"

A perusal of the order passed by the Commissioner of Income Tax (Appeals) – 16, Kolkata [CIT(A)] dated 6th July 2017 makes the position much clearer. Relevant portion of the order passed by the CIT(A) is as follows:-

- *As per the scope of section 271AA of the Act relevant to concerned financial year, the appellant has duly kept and maintained information and documents as required by section 92D(2)(1) of the Act.*

- *The AO has wrongly applied amended section 271AA which is effective from AY 2012-13 onwards*
- *Delay in furnishing of information is not covered within the scope of section 271AA of the Act. Rather the same is covered in section 271G of the Act. It will not be out of context to note that proceeding initiated u/s 271G has already been dropped by the AO*
- *For non filing of Form 3CEB as per section 92E of the Act within the due date of filing return, the AO has already levied penalty u/s 271BA of the Act.*

From the above undisputed fact, it is seen that the Assessing Officer wrongly applied the amended Section 271AA which is effective from the assessment year 2012-13. That apart, for the delay in furnishing an information, the same could be covered under Section 271G of the Act. However, the Assessing Officer dropped the proposal to impose penalty under Section 271G of the Act. Further, for non-filing of Form-3CEB as per Section 92E of the Act within the due date of filing the return, the Assessing Officer had already levied penalty under Section 271BA of the Act.

In the light of the above factual conclusion, we are convinced that the learned Tribunal rightly affirmed the order passed by the CIT(A) and the impugned order does not call for any interference.

Accordingly, the appeal (ITAT/230/2022) is dismissed and the substantial question of law is answered against the revenue.

The application for stay being IA No.GA/2/2022 stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

S.Pal/s.kumar