OD-14

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

ITA/324/2009
IA NO. GA/1/2009 (OLD NO. GA/2939/2009)

COMMISSIONER OF INCOME TAX (CENTRAL) – III, KOLKATA
Vs.
MAN MOHAN MALL

BEFORE:
The Hon'ble JUSTICE T. S. SIVAGNANAM
AND
The Hon'ble JUSTICE HIRANMAY BHATTACHARYYA
Date : 9th February 2023.

Appearance:
Mr. Smarajit Roychowdhury, Adv.
Mr. Soumen Bhattacharjee, Adv.
…for the appellant.

GA/1/2009(OLD NO. GA/2939/2009)

The Court : Heard learned Counsel for either side.

It appears that this appeal filed by the revenue is time barred and it is delayed by a period of sixty days.

We have perused the affidavit filed in support of the condonation of delay petition and we find sufficient cause has been shown for not preferring the appeal within the period of limitation. Hence, the delay is condoned and the application is allowed.

ITA/324/2009

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 23.04.2009 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata (the Tribunal) in I.T. (S.S).A.No. 95/Kol/2008 for the assessment year 2003-04.

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

> *"(a) Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified in allowing the claim of business loss on account of sale of share for the sum of Rs.38,40,280/- on the basis of additional ground taken by the assessee in course of appellate proceeding ?"*

As could be seen from the substantial question of law raised by the respondent that even assuming the revenue succeeds in this appeal the tax effect will be less than Rs.1 crore and, therefore, the revenue cannot pursue this appeal.

Hence, the appeal stands disposed of on the ground of low tax effect and the substantial question of law is left open.

(T. S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

R bhar/GH.