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

ITAT/241/2022
IA No: GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX 9, KOLKATA
VS.
M/S. BALAJI DEVELOPERS

BEFORE :

THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 9th January, 2023

Appearance :
Mr. Prithu Dudhoria, Adv.
....for appellant

Mr. Avra Majumder, Adv.
Mr. Binayak Gupta, Adv.
Mr. Suman Bhowmick, Adv.
...for the respondent

The Court : We have heard Mr. Prithu Dudhoria, learned standing counsel appearing for the appellant and Mr. Avra Majumder, learned counsel appearing for the respondent/assessee.

Though there is no satisfactory explanation for the inordinate delay of 1018 days in filing the appeal, since we are inclined to take up the main appeal itself for consideration and to ascertain as to whether any substantial question of law arises for consideration, we exercise discretion and condone the delay in filing the appeal. For such reason, the application being IA No.:GA/1/2022 is allowed.

ITAT/241/2022

This appeal filed by the revenue under Section 260A of the Income Tax Act (the Act, for brevity) is directed against the order dated 6th September, 2019 passed by the Income Tax Appellate Tribunal, `C' Bench, Kolkata (Tribunal) in I.T.A No.1787/Kol/2013 for the assessment year 2009-10.

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

"a) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law as well as in fact in deleting the addition of Rs.22,65,830/- on bogus space owner's payment without considering the fact that they do not belong to project site of the assessee as evident from his annual report for the financial year 2008-09 submitted during the course of assessment proceedings?

b) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law as well as on facts by allowing the proportionate relief to the assessee of Rs.75,40,000/- without considering the fact that assessee followed project completion method and further ignoring the fact that assessee debited Rs.1,21,92,573/- being cost of Viekananda Sarani Project though they had no income from this project?

c) Whether on the facts and in the circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law in not considering the fact that assessee did not produce any evidence in support of claim of advance of Rs.2,42,37,820/- taken before the assessment year 2009-10?"

We have heard Mr. Prithu Dudhoria, learned standing counsel appearing for the appellant and Mr. Avra Majumder, learned counsel appearing for the respondent/assessee.

After elaborately hearing the learned Advocates for the parties and carefully perusing the order impugned in this appeal, we find that there were four issues which were raised before the Tribunal by the revenue, the first issue being disallowance of amount paid to space owners. The learned Tribunal took note of the factual position as well as how the facts were appreciated by the Commissioner of Income Tax (Appeals) [CIT(A)] and noted that the department could not controvert the factual finding and accordingly the said issue was decided against the revenue.

The second issue was regarding the disallowance of payments made to KMC. On this issue also the learned Tribunal had examined the factual position and noted that the order passed by the CIT(A) was based on an assessment report given by the Assessing Officer and accordingly decided the issue against the revenue.

The third issue was regarding deletion of disallowance of Rs.2,43,37,820/- being advance received by the assessee which was assessed under the head `Income from other sources' by the Assessing Officer. The learned Tribunal re-appreciated the factual position which was brought on record by the CIT(A) and noted that the department could not controvert the stand and accordingly decided the issue against the revenue.

The fourth issue was with regard to the issue of proportionate relief granted by the CIT(A) on the claim of the assessee that it was following project completion method of accounting on closing stock. This issue also was dealt with by the learned Tribunal by re-appreciating the facts brought on record by the CIT(A), which could not be controverted by the department, while the appeal was heard by the Tribunal.

Thus, we find the Tribunal had dismissed the appeal of the revenue by noting the factual position, which could not be controverted by the department.

Thus, we find no substantial question of law arises for consideration in this appeal. Accordingly, the appeal fails and is dismissed.

The application for stay being IA No.:GA/2/2022 also is dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

SN/S.Pal.