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

ITAT/242/2022
IA NO: GA/1/2022, GA/2/2022

PRINCIPAL COMMISSIONER OF INCOME TAX 2, KOLKATA
VS.
M/s. CFL CAPITAL FINANCIAL SERVICES LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 3rd January, 2023

__Appearance__ :
Mr. Tilak Mitra, Adv.
…for appellant.

The Court : - Heard Mr. Tilak Mitra, learned standing Counsel for the appellant

Though notice has been served and affidavit-of-service has been filed, none appears for the respondent.

Since we are inclined to take up the appeal for consideration we exercise discretion and condone the delay in filing the appeal. Accordingly, the application is allowed.

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961, (the Act), is directed against the order dated 22.1.2020 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata (the Tribunal) in ITA/2390/Kol/2018 relating to the assessment year 1995-96 the revenue has raised the following substantial question of law for consideration:

" i) FOR that on the fact and circumstances of the case, the decision of the learned Income Tax Appellate Tribunal is considered to be not acceptable in this case as the provisions of section 153(2A) of the Act is applicable in those case where the entire assessment gets restored. But in the instant case, only the disputed purchase cases related issue was restored by the Income Tax Appellate

Tribunal before. Therefore, provisions of section 153(3)(ii) is applicable in this case where no time limit is applicable?"

Heard Mr. Tilak Mitra, learned standing Counsel for the appellant.

Though notice has been served o the respondent none appears for the respondent.

On perusal of the order passed by the learned Tribunal we find that Tribunal had noted the factual position and held assessment made on the respondents/assessee is barred by limitation. The revenue seeks to take advantage of Section 153(3)(ii) of the Act. The very same contention was raised by the revenue before the Commissioner of Income Tax (Appeals) 20 Kolkata in the appeal filed by the assessee against the assessment order. The Commissioner of Income Tax (Appeals) after noting the facts held that the provisions of Section 153(3)(ii) of the Act are not attracted in the facts and circumstances of the case on hand. To support such contention reliance was also placed on the decision of the Calcutta Bench of the Tribunal in the case of W.C. Shaw Pvt. Ltd. Vs. Assistant Commissioner of Income Tax, [2005] 93 ITD 535 (Kol). Thus we find that both the Commissioner of Income Tax (Appeals) as well as the Tribunal had taken note of the factual position and held the assessment to be barred by time. Hence, we find there is no substantial questions of law arising for consideration in this appeal.

Accordingly, the appeal fails on consideration and dismissed.

Affidavit-of-service be kept with the record.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.