OD–11

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

ITAT/246/2022
IA NO: GA/1/2022, GA/2/2022

PRINCIPAL COMMISSIONER OF INCOME TAX 1, KOLKATA
VS.
M/S. ASHIANA HOUSING LTD.

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

*Appearance* :
*Mr. Prithu Dhudheria, Adv.*
*…for appellant.*
*Mr. Pratyush Jhunjhunwalla, Adv.*
*..for respondent*

The Court : - We have heard Mr. Prithu Dhudheria, learned standing counsel for the appellant and Mr. Pratyush Jhunjhunwalla, learned counsel for the respondent/assessee.

There is a delay of 895 days in filing the appeal. Though the reasons given in the affidavit filed in support of the condone delay petition are not convincing yet we propose to examine the merits of the matter to consider as to whether any substantial question of law arises for consideration. For such reason alone, we exercise discretion and condone the delay in filing the appeal. Hence, the petition is allowed. Delay in filing the appeal is condoned.

This appeal by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 17th January, 2021 passed by the Income Tax Appellate Tribunal, A Bench, Kolkata (the Tribunal) in ITA/1219/KOL/2018 for the assessment year 2012-13. The revenue has raised the following substantial questions of law for consideration:-

i) Whether on the facts and circumstances of the case the Learned Income Tax Appellate Tribunal has erred in law as well as in fact in upholding the order of CIT(A) allowing the future development expenses amounting to Rs.2,24,85,000/- whereas such liability has not crystallized during the relevant previous year and unascertain liabilities are not allowable as the Assessee is following mercantile system of accounting ?

We have heard Mr. Prithu Dhudheria, learned standing counsel for the appellant and Mr. Pratyush Jhunjhunwalla, learned counsel for the respondent/assessee.

After elaborate hearing the learned Advocates for the parties and carefully perusing the order passed by the learned Tribunal we find grievances raised by the revenue as against the order passed by the Commissioner of Income Tax (Appeals) is only on one issue as to whether the CIT(A) erred in law as well as on facts in accepting the assessee's future development expenses claimed by ignoring the fact that the same was in the nature of mere provision for unascertained liability only. The learned Tribunal after considering the factual position has approved the findings recorded by the CIT(A). In fact before the learned Tribunal the revenue could not pinpoint any distinction on facts or on law in respect of the findings recorded by the CIT(A).

Thus we are convinced to hold that there is no substantial question of law arising for consideration in this appeal.

Accordingly, the appeal fails and dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.