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

ITAT/261/2022
IA NO. GA/1/2022, GA/2/2022

PRINCIPAL COMMISSIONER OF INCOME TAX-2, KOLKATA
VS.
M/s. USHA POLYCHEM INDIA PVT. LTD.

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 16th January, 2023

Appearance :
Mr. Vipul Kundalia, Adv.
Mr. Soumen Bhattacharjee, Adv.
….for the appellant.

Mr.Avra Mazumder, Adv.
Mr. Samrat Das, Adv.
… for the respondent.

GA/1/2022

The Court : We have heard respective counsel for the either side.

It appears that there is a delay of 301 days in filing the appeal. On perusal of the affidavit filed in support of the condone delay petition, we find that sufficient cause has been shown for not preferring the appeal within the period of limitation. Hence, application being IA No.GA/1/2022 is allowed and the delay in filing the appeal is condoned.

ITAT/261/2022

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act, in brevity) is directed against the order dated 25th August, 2021 passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata in ITA

No.115/Kol/2021 for the assessment year 2012-13. The revenue has raised the following substantial questions of law for consideration :-

a) Whether the Learned Tribunal has committed substantial error in law by holding that the initiation of revisional proceedings against the assessee is bad and order dated 15.03.2021 is void in the eye of law and therefore quashed ?

b) Whether the Learned Tribunal has committed substantial error in law by holding that the issue of huge unaccounted fund of Rs.25,00,000/- after layering through various companies to the assessee company's bank account need no verification and enquiries and such finding is perverse ?

c) Whether the Learned Tribunal has failed to consider that 'Prejudicial to the interests of the Revenue' is of wide import and is not confined to only loss of taxes and if the Assessing has accepted the claim of the assessee without any enquiries, such assessment order passed by the assessing officer is erroneous ?

We have heard Mr. Vipul Kundalia, learned standing counsel along with Mr. Soumen Bhattacharjee, learned counsel for the appellant and Mr. Avra Mazumder, learned counsel for the respondent.

The short issue which falls for consideration in the instant case is whether the assumption of jurisdiction by the Principal Commissioner of Income Tax, Kolkata – 2 (*PCIT)* under Section 263 of the Act was justified. The Tribunal had allowed the assessee's appeal and held that the PCIT has not recorded any finding that he has reason to believe that income assessable to tax has escaped assessment and the revenue being aggrieved by the said finding on an appeal before us. What is important to note in the instant case is that the assessment for the year under consideration, AY 2012-13 was completed on 30.03.2015. Subsequently, the assessment was reopened based on the information received from the DDIT (Investigation) Unit 2(2), Kolkata dated 06.03.2019. Thereafter, notice under Section 148 of the Act was issued on 29.03.2019 and in response to such notice the assessee filed its return of income declaring a total income of Rs.23,440/-. Subsequently, notices were issued under Section 143(2), 142(1) of the Act and the assessee filed his response along with documents. The Assessing Officer on considering the documents and the return furnished by the assessee accepted the stand taken by the assessee and completed the assessment. It is seen that PCIT has exercised jurisdiction under Section 263 of the Act on the very same information furnished by the DDIT (Investigation) Unit 2 (2) dated 06.03.2019. On perusal of the order passed by the PCIT dated 15.03.2021 in which the show cause notice issued under Section 263 of the Act has been extracted, the PCIT has not recorded any finding that he has reason to believe that income that is assessable to tax has escaped assessment.

In the absence of such finding, we are of the view that the Tribunal was right in coming to the conclusion that the PCIT erred in exercising its jurisdiction. Our view is supported by the decision in the case of *PCIT Vs. ANINDITA STEELS LIMITED* ; [2022] 137. taxmann.com 203 (CAL).

The learned standing counsel for the appellant relied upon the decision of the Hon'ble Supreme Court in *MALABAR INDUSTRIAL CO. LTD. Vs. COMMISSIONER OF INCOME TAX, KERALA STATE*, (2000) 2 Supreme Court Cases 718 and, in particular two paragraphs 10 and 11 of the said decision.

In fact, the said decision would support the case of the respondent assessee and would lead us to affirm such an order.

Thus, in the light of the factual aspect brought out by the Tribunal while granting relief to the assessee, we find no substantial questions of law, much less substantial questions of law arising for consideration in this appeal.

Accordingly, the appeal fails and is dismissed.

Consequently, the stay application being IA No.GA/2/2022 stands dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

s.pal/GH.