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

ITAT/266/2022
IA NO. GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX 13, KOLKATA
VS.
M/S ROSEMARY VINCOM LLP

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 10TH FEBRUARY, 2023

Appearance :
Ms. Smita Das De, Adv.
…for appellant
Mr. S.M. Surana, Adv.
…for appellant

GA/1/2022

The Court : - Heard learned Counsel for the either side.

It appears that there is a delay of 359 days in filing the appeal.

On perusal of the affidavit filed in support of the petition we find that sufficient cause has been shown by the appellant for not preferring the appeal within the period of limitation. Therefore, the application is allowed. The delay in filing the appeal is condoned.

ITAT/266/2022

This appeal by the revenue filed under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 23rd June, 2021 passed by the Income Tax Appellate Tribunal "B" Bench Kolkata (the Tribunal) in ITA No. 651/Kol/2021 for the assessment year 2015-2016. The revenue has raised the following substantial questions of law for consideration :-

a. Whether on the facts and circumstances of the case the Learned Tribunal was justified in law to dismiss the Misc. Appeal filed by the revenue on the ground that the said appeal had no merit ?

b. Whether on the facts and circumstances of the case the Learned Tribunal was justified in observing that the case of the assessee pertains to take over and not conversion ?

c. Whether on the facts and circumstances of the case the Learned Tribunal was justified in law to observe that Pr. Commissioner of Income Tax does not have the power to convert the limited scrutiny into a complete scrutiny without considering the CBDT instruction No.5/2016 dated 14.07.2016 in the order dated 23.06.2021 passed in ITA No.65/Kol/2021.

d. Whether on the facts and circumstances of the case the Learned Tribunal was justified in law to hold that both the ITA No.65/Kol/2021 dated 23.06.2021 and ITA No.66/Kol/2021 pertains to two different issues ignoring the fact the assessee holds two PAN Numbers being AAFCR1320Q and AASFR0062P against which separate appeals were filed under two respective PAN Numbers, one against the Order of the Commissioner of Income Tax Appeal-2, Kolkata and another against the Revision Order passed by the Pr. Commissioner of Income Tax-16, Kolkata under section 263 of the said Act ?

The present appeal filed by the revenue is against an order passed by the learned Tribunal in a miscellaneous application filed by the revenue in MA No. 28/Kol/2021 in ITA No. 66/Kol/2021. The revenue contended before the Tribunal that two orders have been passed by the Tribunal i.e. one on 23.06.2021 and the other order on 24.06.2020 in respect of the very same assessment year and, therefore, the mistake has to be rectified and one of the order is to be recalled. The learned Tribunal took note of the factual position and has pointed out that two orders have been passed by the learned

Tribunal in two appeals arising out of two different orders; one passed by the PCIT under Section 263 of the Act, and another passed by the Commissioner of Income Tax, (Appeals) 2 Kolkata under Section 250 of the Act. The learned Tribunal has pointed out that the department could not dispute this factual position which was apparent from the records. Therefore, the miscellaneous application was dismissed.

In our considered view since the two orders passed by the learned Tribunal arising out of the appeals filed against two different orders, one passed by the PCIT and the one passed by the CITA, the dismissal of the miscellaneous application passed by the learned Tribunal is fully justified. If the revenue is aggrieved by the two orders passed by the learned Tribunal nothing prevents them from filing appeals before this Court, against these two orders for which no liberty is required from this Court as the Statute provides an appellate remedy to the aggrieved person, who is aggrieved by the orders passed by the Tribunal.

In the result, we find there is no substantial questions of law arising out for consideration in this appeal. Accordingly, the appeal is dismissed with the aforementioned observation.

Consequently, the stay petition stands closed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.