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

ITAT/277/2022
IA NO: GA/1/2022, GA/2/2022
PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 1, KOLKATA
VS.
M/s. IDEAL HEIGHTS PVT. LTD. , KOLKATA

BEFORE :
THE HON'BLE JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 6TH FEBRUARY, 2023

Appearance :
Ms. Smita Das De, Adv.
…for appellant
None appears
…for respondent

GA/1/2022

The Court : - We have heard Ms. Smita Das De, learned standing Counsel for the appellant. Though the respondent has been served, none appears for the respondent.

There is a delay of 644 days in filing the appeal.

On perusal of the affidavit filed in support of the application for condonation of delay we find sufficient cause has been shown for not preferring the appeal within the period of limitation. For such reason the application and the delay in filing the appeal is condoned.

ITAT/277/2022

This appeal filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated 02.09.2020 passed by the Income Tax Appellate Tribunal "B" Bench, Kolkata in I.T.A. No. 158/Kol/2019 for the assessment year 2012-13. The revenue has raised the following substantial question of law for consideration :-

a) Whether in the facts and in the circumstances of the case the Tribunal was justified in law to allow the deductions under Section 80IB(10) of the said Act by allowing the said consideration of car parking space for the purpose of calculation of deduction under Section 80IB(10) of the said Act?

The learned Tribunal after considering the submissions made on behalf of either side took note of the factual position and accepted the case of the assessee that the car parking area is part and parcel of the housing project and it is a requirement as per the local municipal laws and the building has to compulsorily provide/construct car parking in specified ratios to the residential flats. Thus taking note of the said factual situation the learned Tribunal accepted the case of the assessee and dismissed the appeal filed by the revenue holding that profit derived from the sale of car parking are/space is also eligible for claiming deduction under Section 80IB(10) of the Act. Furthermore, the learned Tribunal noted that the Commissioner of Income Tax (Appeals) while allowing the assessee's appeal had taken note of the decision of the Bombay Bench of the Tribunal as well as the decision of the High Court of Bombay in the case of *M/s. Purvankara Projects Ltd.* which appears to have attained finality as revenue has not preferred any appeal against the decision of the High Court at Bombay. Thus on finding of facts learned Tribunal has affirmed the view taken by the CITA which does not call for any interference. Thus we are of the view that no substantial question of law arises out for consideration in this appeal.

Thus the appeal fails and dismissed.

(T.S. SIVAGNANAM, J.)

(HIRANMAY BHATTACHARYYA, J.)

Pkd/GH.