OD–4

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/65/2024
IA NO: GA/1/2024, GA/2/2024

PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 1 KOLKATA
VS
M/S CONCLAVE DEALERS PVT LTD

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 28TH February, 2024.

Appearance :
Ms. Smita Das De, Adv.
Mr. Prithu Dudheria, Adv.
...for appellant.

The Court :- We have heard Ms. Smita Das De and Mr. Prithu Dudheria, learned counsel for the appellant. The notice sent to the respondent/assessee has returned with the endorsement 'door locked'.

We find that the assessee did not appear before the tribunal in the appeal filed by the revenue. Therefore, we proceed to take up the matter for consideration.

There is a delay of 23 days in filing the appeal. We have perused the affidavit filed in support of the condone delay application and we find sufficient cause has been shown for not preferring the appeal within the period of limitation.

Accordingly, the application is allowed and the delay in filing the appeal is condoned.

This appeal filed under section 260A of the Income Tax Act, 1961 is directed against the order dated 31.7.2023 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata in ITA/349/Kol/2022 for the assessment year 2013-14. The revenue has raised the following substantial question of law for consideration.

> "a. Whether on the facts and in the circumstances of the case, the Learned Income Tax Appellate Tribunal was justified in law to restrict the addition of Rs.39,03,19,009/- to @12.5% of total turnover Rs.57,58,99,955/- i.e. Rs.7,19,87,495/-, without considering the fact that the assessee had failed to discharge his onus, of proving creditworthiness and identities of the creditors and genuineness of transactions, with regard to "Sundry Creditors", during the previous year 2012-2013 relevant to Assessment Year 2013-2014 ?"

We have elaborately heard the learned standing counsel for the appellant/revenue. As could be seen from the impugned order the assessee did not appear before the tribunal to contest the appeal filed by the revenue. The correctness of the order passed by the Commissioner of Income Tax [Appeals], Kolkata dated 29.10.2021 was subject matter of challenge before the tribunal. By the said order the C.I.T. [A] had fixed the gross profit of the assessee company at 10% of the total turnover and addition to such extent was affirmed. The learned tribunal on considering the facts and circumstances of the case found that the view taken by the C.I.T.[A] was too lenient in applying the various judicial decisions, held that the gross profit at 12.50% is reasonable and justified. Accordingly, the order passed by the C.I.T.[A] was modified and the assessing officer was directed to apply the gross profit at 12.50% instead of 5% and the appeal filed by the revenue was partly allowed.

We find there is no error in the discretion exercised by the tribunal nor there is any perversity for us to interfere with the order passed by the tribunal, more particularly when there is no substantial question of law arises for consideration.

Accordingly, the appeal fails and the same is dismissed.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH.