OD-26

ORDER SHEET
ITAT/84/2024
IA NO: GA/1/2024
IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION(INCOME TAX)
ORIGINAL SIDE

PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 1, KOLKATA
-VS-
SURENDRA STEELS PRIVATE LIMITED

BEFORE:
THE HON'BLE THE CHIEF JUSTICE T.S. SIVAGNANAM
AND
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA

DATE: 22ND MARCH 2024.

Mr. P. Dudheria, Adv.

Mr. S. Agarwal, Adv.; Mr. B.K. Singh, Adv.; Mr. D. Poddar, Adv.,

The Court: This appeal filed by the revenue under section 260A of the Income Tax Act, 1961 (the Act) is directed against the order dated August 9, 2023 passed by the Income Tax Appellate Tribunal, "B" Bench, Kolkata in ITA No.217/Kol/2023 relating to assessment year 2016-17.

The revenue has raised the following substantial questions of law for consideration:

(a) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in law to delete the addition of

Rs.3,36,68,575/- made on account of disallowance of deduction u/s 80IC of the I.T. Act, 1961?

(b) Whether on the facts and in the circumstances of the case, the learned Tribunal was justified in law to delete the addition without considering the fact that assessee has failed to comply the mandatory condition for claiming deduction u/s 80IC of the Income Tax Act 1961 as assessee did not file ITR in due time, which is a mandatory condition laid down in unambiguous language contained in section 80AC of the Act?

We have heard Mr. Dudheria, learned counsel for the appellant, and Mr. Agarwal, learned counsel appearing for the respondent.

The issue involved in this appeal is whether the Tribunal was justified in affirming the order passed by the Commissioner of Income Tax, Kolkata-20, thereby deleting the amount of Rs.3,36,68,575/- made by the Assessing Officer on account of disallowance under section 80AC of the Act.

On perusal of the order passed by the CITA, dated December 13, 2022, we find that the due date for filing of the return was October 17, 2016 whereas the return could be filed by the assessee only on October 18, 2016, the reason being that there was congestion in the online portal of the Income Tax Department which was obviously beyond the control of the assessee.

Further, the assessee had demonstrated before the CITA that it had generated the XML file on the Income Tax Portal on October 17, 2016 and uploaded the same but due to the congestion, the ITR-V which was generated has shown the date of filing as October 18, 2016. However, the XML file available in the Income Tax Portal showed the date of creation as October 17, 2016.

Apart from that, the CITA also noted that even assuming that there was delay, it was negligible as it was only for a few hours.

Thus the CITA came to the conclulsion that the assessee cannot be denied of the benefit merely on technical grounds. The correctness of the finding entered by the CITA was tested by the Tribunal in the appeal filed by the department that the Tribunal had referred in the assessee's own case for the assessment year 2019-20.

Mr. Agarwal, learned counsel appearing for the respondent would fairly submit that the said decision is slightly different on facts and perhaps need not be referred to the said decision as assessee's own case for the assessment year 2019-20.

Be that as it may, the Tribunal in that case had noted that the assessee's books of accounts were audited and the assessee had filed Form 3CA and Form 3CB on October 17, 2017 and Form 10CCB in respect of the claim under section 80AC was also filed on October 17, 2016 which was well within the due date.

Thus the Tribunal on reappreciation of the facts had dismissed the appeal filed by the revenue.

Thus no question much less substantial question has arisen in this appeal. Accordingly, the appeal fails and is dismissed along with the connected application.

(T.S. SIVAGNANAM, CJ.)

(HIRANMAY BHATTACHARYYA, J.)

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