OD – 16

IN THE HIGH COURT AT CALCUTTA
Special Jurisdiction [Income Tax]

ORIGINAL SIDE

ITAT/199/2024
IA NO: GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX 1 KOLKATA
VS
ASHIANA LANDCRAFT REALTY PVT LTD

BEFORE :
THE HON'BLE CHIEF JUSTICE T.S. SIVAGNANAM
And
THE HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
Date : 20th December, 2024

Appearance :
Mr. Prithu Dudhoria, Adv.
...for the appellant.

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 24, 2023 passed by the Income Tax Appellate Tribunal, "A" Bench, Kolkata (the Tribunal) in ITA No.29/Kol/2022 for the assessment year 2015-16.

The revenue has raised the following substantial questions of law :

"*(a) WHETHER the Ld. Income Tax Appellate Tribunal has committed substantial error in law by quashing the order passed by the PCIT-3, Kolkata under Section 263 of the Income Tax Act, 1961 by holding that the assessment order dated 28.12.2017 passed by the Assessing Officer were not erroneous and prejudicial to the interest of the revenue?*

(b) WHETHER the Ld. Income Tax Appellate Tribunal has substantially erred in law in deleting the addition made u/s. 37(1) of the Act of Rs.47,55,000/ on account of payments of penal interest to External Development Charges (EDC)."

We have heard Mr. Prithu Dudhoria, learned senior standing counsel appearing for the appellant/revenue.

The question involved in this appeal is whether the learned Tribunal was right in allowing the assessee's appeal holding that the assumption of jurisdiction by the Principal Commissioner of Income Tax [PCIT] under Section 263 of the Act was erroneous.

We have carefully considered the submissions made by the learned senior standing counsel and looked into the facts of the case. The assessee had entered into an agreement with the Director of Town and Country Planning, Haryana. They were required to make certain payments for the external development charges. Though, there was a date for effecting such payment, the assessee did not make the payment within the said date but paid belatedly for which interest became payable to the tune of Rs.47,50,000/- which the assessee claimed as expenditure. This, in the opinion of the PCIT, was to be disallowed by the assessing officer on the ground that the said amount is penal in nature. On examination of the terms and conditions of the agreement the learned Tribunal found that the interest payable by the assessee to the Director of Town and Country Planning, Haryana was compensatory in nature and not penal in nature and, therefore, held that the assumption of jurisdiction by the PCIT under Section 263 of the Act was erroneous. Thus, we find that the matter to be entirely factual and no question of law much substantial question of law arises for consideration.

Hence, the appeal is dismissed and the connected application stands closed.

(T.S. SIVAGNANAM)
(CHIEF JUSTICE)

(HIRANMAY BHATTACHARYYA, J.)

S.Das/SM.
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