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

ITAT/218/2024
IA NO: GA/1/2024, GA/2/2024
PRINCIPAL COMMISSIONER OF INCOME TAX CENTRAL 2 KOLKATA
VS
SRI RAHUL SARAF

BEFORE :
THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE HIRANMAY BHATTACHARYYA
DATE : September 20, 2024.

Appearance :
Mr. Soumen Bhattacharjee, Adv.
Ms. Doyel Dey, Adv.
…for appellant.
Mr. Soumitra Chowdhury, Adv.
Mr. Avra Mazumder, Adv.
Mr. Pranabesh Sarkar, Adv.
Mr. Suman Bhowmik, Adv.
Mr. Samrat Das, Adv.
Ms. Elina Dey, Adv.
Mr. Sourendra Nath Banerjee, Adv.
…for respondent

The Court :- We have heard learned Counsel appearing for the parties.

It appears there is a delay of 206 days in filing the appeal. The delay having been properly explained the same is condoned. The application for condonation of delay is allowed.

This appeal has been filed by the revenue under Section 260A of the Income Tax Act, 1961 (the Act) challenging the order dated 9th August, 2023 passed by the Income Tax Appellate Tribunal, "B" Bench Kolkata in ITA (S.S.) A. No.:117/Kol/2022 for the assessment year 2009-10.

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

i) Whether the Learned Tribunal has committed substantial error in law by not considering the fact that the assessee neither disclosed long term capital gain from sale of shares nor claimed any deduction under Section 54F in his return of income for the assessment year 2009-10 and also the facts that as the assessee had actually earned short term capital gain from sale of equity shares of Forum IT Park and the investment was made in land therefore the assessee was not eligible to claim deduction under Section 54F which came to light in the Course of assessment under Section 143(3) read with Section 153A only as a result of seizure of the statement in respect of Ballygunj House which was stated to have been under Construction as on 31.03.2011 ?

ii) Whether the Learned Tribunal has committed substantial error in law in affirming the decision of the CIT(A) in deleting the addition made on account of short term Capital Gain and disallowance of claim and deduction under Section 54F considering the facts of the case of the assessee for assessment year 2008-09 without appreciating that unlike assessment year 2008-09, the assessee in the return of income filed for assessment year 2009-10, neither disclosed details of transactions in equity share nor claimed any deduction under Section 54F?

iii) Whether the Learned Tribunal has committed substantial error in law in placing reliance on the judgment of the Hon'ble Apex Court in the case of M/s. Abhisar Buildwell (P) Ltd. [2023]149.taxmann.com399(SC) even though in this case addition/disallowance was made on the basis of incriminating document found and seized during the course of search and seizure operation?

As could be seen from the stay petition the tax effect in this appeal is much below the threshold limit of Rs.2 crore as fixed by the Central Board of Direct Tax in Circular No. 9 of 2024.

Therefore, revenue cannot pursue this appeal.

Accordingly, the appeal stands disposed of on the ground of low tax effect and the substantial questions of law suggested are left open.

Consequently, GA/1/2024 and GA/2/2024 stand disposed of.

(T.S. SIVAGNANAM)
CHIEF JUSTICE

(HIRANMAY BHATTACHARYYA, J.)

pkd/GH